Supreme Court, U.S.
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No. 06-517

In The
Supreme Court of the United States

U.S. BANK NATIONAL ASSOCIATION,
as Indenture Trustee,

Petitioner,

v.

JPMORGAN CHASE BANK, as Trustee;
JEFFERSON-PILOT LIFE INSURANCE COMPANY;
JEFFERSON-PILOT FINANCIAL INSURANCE
COMPANY; TYNDALL PARTNERS, LP; and
TYNDALL INSTITUTIONAL PARTNERS, LP,

Respondents.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Third Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Section 502(b) of the Bankruptcy Code provides that, if an objection is made to a claim in bankruptcy, the court "shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount. . . ." May courts selectively apply § 502(b) to discount some future payment obligations but not others to present value?

RULE 14.1(b) AND RULE 29.6 STATEMENT

U.S. Bank National Association is a national banking association. Its parent company is U.S. Bancorp. No publicly held company has any ownership interest in U.S. Bank National Association.

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PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The majority and dissenting opinions of the court of appeals (App., at 1-57) are reported at 449 F.3d 588. The order denying the petition for rehearing and suggestion for rehearing *en banc* (App., at 92-93) is unreported. The opinion of the district court affirming the decision of the bankruptcy court (App., at 58-65) is unofficially reported at 2005 WL 440798. The decisions of the bankruptcy court (App., at 66-91) are unreported.

JURISDICTION

The court of appeals' judgment was entered on June 9, 2006. A timely petition for rehearing was denied on July 11, 2006 (App., at 92-93). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTE INVOLVED

Section 502(b) of the Bankruptcy Code (11 U.S.C. § 502(b)) states in pertinent part:

> Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount except to the extent that—
>
> * * *

(2) such claim is for unmatured interest;

* * *

STATEMENT

This case presents an important question concerning the interpretation of 11 U.S.C. § 502(b) on which the circuits are in conflict. Until the decision below, it was settled law that creditors' claims for future payment must be discounted to present value under § 502(b) to place them on equal footing with claims that are due immediately as of the petition date. The decision of the Third Circuit below marks the first time that a court of appeals has refused to apply § 502(b) to discount an obligation for future payment. It creates a conflict not only with the Sixth and Tenth Circuits, but also with a broad range of bankruptcy courts who have found § 502(b)'s command unambiguous. The underlying issue is an important one because it involves the claims allowance process, which is central to the administration of the Bankruptcy Code. And this case is an ideal vehicle for considering the issue: The Third Circuit directly addressed and rejected the conflicting interpretations of the other circuits; the issue is outcome determinative for this case; more than $20 million turns on the question in this case alone; and the appeal arose on stipulated facts.

A. The Structure of the Bankruptcy Code and its Treatment of Claims for Future Obligations

To grant debtors a fresh start, the Bankruptcy Code sweeps in all claims existing against a debtor as of the

petition date; disallows some aspects of those claims; discounts claims for future obligations to present value to place all creditors on an equal footing; and distributes property to satisfy the claims under the debtor's plan of reorganization.

The Bankruptcy Code defines "claims" against a debtor expansively to include future obligations because its goal is inclusive: to settle all claims and grant a fresh start to the debtor. The definition of "claim" therefore embraces any "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." 11 U.S.C. § 101(5)(A). As this Court has explained, "Congress intended by this language to adopt the broadest available definition of 'claim.'" *Johnson* v. *Home State Bank*, 501 U.S. 78, 83 (1991).

Because the Code defines "claim" so broadly, creditors may assert immediately their right to future payments that otherwise would not have been due for years. In this sense, a bankruptcy petition "operates as the acceleration of the principal amount of all claims against the debtor." *In re Manville Forest Prods. Corp.*, 43 B.R. 293, 297 (Bankr. S.D.N.Y. 1984), *rev'd, in part, on other grounds*, 60 B.R. 403 (S.D.N.Y. 1986).

All claims for future rights to payment may be *filed*, but not all claims are *allowed*. If no party in interest objects, the full filed claim is allowed. 11 U.S.C. § 502(a). But upon objection, § 502(b) and its subdivisions narrow the scope of allowed claims according to the policy decisions of Congress. They disallow some claims in their entirety and adjust all claims for future obligations to

present value so they can be treated equally. Section 502(b)(2), for example, entirely disallows claims for "unmatured interest." 11 U.S.C. § 502(b)(2). And, "[t]o insure the relative equality of payment between claims that mature in the future and claims that can be paid on the date of bankruptcy" (*Pension Benefit Guar. Corp.* v. *CF&I Fabricators of Utah, Inc.* (*In re CF&I Fabricators of Utah, Inc.*), 150 F.3d 1293, 1300 (CA10 1998)), section 502(b) itself requires courts to discount all future claims to present value by instructing the courts to "determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition." 11 U.S.C. § 502(b).

Ultimately, allowed claims are entitled to a pro rata distribution of the assets of the bankruptcy estate, according to the sufficiency of the assets to meet the claims. Then, when the debtor's plan of reorganization is consummated, all claims are discharged and deemed satisfied and released.

B. The Claims for Future Obligations Filed by Respondent JPMorgan

This case reaches the Court on undisputed facts. App., at 10 ("The parties do not dispute the Bankruptcy Court's factual findings."). At issue are $29.2 million in claims for future principal payments—due from 2011 through 2029—filed by JPMorgan Chase Bank against Oakwood Homes Corporation, the Debtor.

JPMorgan's claims arise from certificates of interest purchased in Real Estate Mortgage Investment Conduit ("REMIC") securitization trusts. The REMIC trusts, created by an Oakwood corporate affiliate, were established to

finance Oakwood's business. App., at 68. Oakwood designs, builds, and sells manufactured modular homes. *Id.*, at 67. It finances the majority of its sales through retail installment contracts or mortgages, and, to convert those long-term payment streams into immediate cash, Oakwood sells the individual obligations to the REMIC trusts. *Id.*, at 68. The trusts "securitize" the underlying individual obligations: They pool the individual streams of principal and interest payments and sell pass-through certificates to investors. *Ibid.* The certificates entitle the holders to receive monthly principal and interest payments funded by monthly collections on the underlying installment contracts and loans. *Ibid.* Not all certificates, however, are created equally. They are instead created in tranches holding different priorities to payment. *Id.*, at 4-5.

JPMorgan's claims are based on the lowest-priority certificates issued by the REMIC trusts, the Class B-2 Certificates. App., at 68. The B-2 Certificates are entitled to payment from the trusts only if all of the higher priority trusts are first paid in full and assets remain. *Id.*, at 4-5. To enhance the marketability of the low-priority B-2 Certificates, Oakwood issued limited guarantees of the payments on them. *Id.*, at 5, 68. Shortfalls on the B-2 Certificates thus become obligations of Oakwood as they occur.

The drafting of the REMIC trust documents establish two key, stipulated facts about the B-2 Certificates and JPMorgan's claims based upon them:

Timing. JPMorgan is not entitled to be paid the first of the principal payments underlying its claims until 2011, and it will not receive the last payment until 2029. App., at 63.

No acceleration. A default by the REMIC trust on any particular set of payments does not entitle the investors to accelerate any of the remaining payments due under the trust. Investors did not loan money to the trust and therefore are not entitled to accelerate repayment of a loan. They purchased certificates and are entitled only to the payments specified by the certificates, at the time they are specified. App., at 63.

Shortly after the REMIC trusts were created and investments in them were sold, it became clear that the assets coming into the trusts were going to be insufficient to make all the payments to the B-2 Certificate holders, and that Oakwood would therefore be called upon to make good on its guarantee on an ongoing basis into the future.

When Oakwood filed for bankruptcy, JPMorgan filed proofs of claim totaling over $1 billion based on Oakwood's guarantees of the underlying trust obligations. Through litigation and agreements, the amount of that $1 billion that is still at issue has been reduced to the $29.2 million described above, which represents anticipated future shortfalls in principal payments by certain of the REMIC trusts. In the litigation below, the parties stipulated to how far short the trusts were going to fall in the future on their payment obligations, and thus stipulated to the amount that Oakwood would be called upon to guarantee. App., at 63, 70, 75, 80, 85, 90. The parties also stipulated to the present value at the time of the bankruptcy of JPMorgan's claims—$8.2 million. *Ibid.* What the parties did not agree upon was whether the claims should be discounted at all.

C. The Bankruptcy Proceedings on JPMorgan's Claims

After JPMorgan filed its proofs of claim, Petitioner U.S. Bank, which serves as successor indenture trustee for holders of over $300 million in general unsecured claims, objected to the claims. First, they included unmatured interest that is disallowed by 11 U.S.C. § 502(b)(2). Second, they included claims for future payments of principal that must be discounted to present value under 11 U.S.C. § 502(b).

The Bankruptcy Court, which exercised jurisdiction under 28 U.S.C. §§ 157 and 1334 (App., at 67), agreed with Petitioner on both grounds.[1] It held that "the Limited Guarantee Claims are disallowed pursuant to section 502(b)(2) of the Bankruptcy Code to the extent they include amounts for interest shortfalls accruing after the petition date." App., at 69. The court further held that "Section 502(b) of the Bankruptcy Code requires the discounting of the Limited Guarantee Claims to present value as of the petition date, notwithstanding the disallowance of the interest shortfalls accruing after the petition date." *Ibid.*

JPMorgan appealed to the United States District Court for the District of Delaware, which exercised jurisdiction under 28 U.S.C. §§ 158(a) and 1334 (App., at 61) and affirmed on both points. The court concluded that "a plain reading of section 502(b) supports the Bankruptcy Court's decision" (App., at 62) because "section 502(b)'s

[1] The Bankruptcy Court issued five orders addressing the five sets of REMIC trusts. App., at 66-91. The legal analysis is identical in each order. For ease of reference, we cite just the first order.

language clearly and unambiguously required the Bankruptcy Court to both discount the instant claims to present value and exclude post-petition interest." App., at 63.

D. Decision of the Court of Appeals

On appeal to the Third Circuit, JPMorgan abandoned its claim for unmatured interest and argued only that the lower courts had improperly applied § 502(b) to discount to present value its claims for future principal payments. Over a dissent by Judge Smith, the Third Circuit reversed.

The Third Circuit concluded first of all that it would be inequitable both to disallow interest and discount the principal on the same claim. The majority "acknowledge[d] that money received today is more valuable than money negotiated to be received in the future." App., at 22. It therefore "wholeheartedly agree[d] that future liabilities must be reduced in some way to reflect the time value of money." *Id.*, at 28. But, the majority concluded, it is not appropriate both to disallow interest on an interest-bearing claim under § 502(b)(2) and to discount the future principal payments under § 502(b), because those two steps both adjust for the time value of money and are economic equivalents. Thus, "once unmatured interest has been disallowed, discounting the remainder of the claim to present value would inequitably twice penalize the creditor for the time value of money." App., at 28.

Having determined what equity required, the Third Circuit rejected the argument that § 502(b) unambiguously required something else—the discounting of all future obligations. "Stated simply, 11 U.S.C. § 502(b) speaks in terms of determining the 'amount' of a claim 'as of' the petition date. However, given that the remainder of

the Bankruptcy Code uses the term 'value, as of' to signify discounting to present value, and 'amount' and 'value' are not synonymous, we cannot say that § 502(b) clearly and unambiguously requires discounting to present value in all situations." App., at 16. The majority emphasized, however, that it was not concluding that discounting was never allowed, just that it was not compelled. "We do not hold here that 11 U.S.C. § 502(b) *never* authorizes discounting a claim to present value, but instead that the statute does not clearly and unambiguously *require* it for all claims evaluated under § 502." App., at 22.

Because it found the text of § 502(b) ambiguous, the majority consulted the legislative history of § 502(b)(2), which states in pertinent part:

> Section 502(b) thus contains two principles of present law. First, interest stops accruing at the date of the filing of the petition, because any claim for unmatured interest is disallowed under this paragraph. Second, *bankruptcy operates as the acceleration of the principal amount of all claims* against the debtor. One unarticulated reason for this is that *the discounting factor for claims* after the commencement of the case *is equivalent to [the] contractual interest rate on the claim.* Thus, this paragraph *does not cause disallowance of claims that have not been discounted to present value because of the irrebutable presumption that the discounting rate and the contractual interest rate (even a zero interest rate) are equivalent.*

App., at 25 (quoting H.R. Rep. No. 95-595, at 352-54 (1977) (emphasis added by the court)).

Ultimately, relying on the legislative history and the court's own reasoning that disallowing interest and discounting principal were economic equivalents, the court concluded that discounting could not be applied to JPMorgan's claims for future principal payments: "The Bankruptcy Court erred: Interest-bearing debt should not be discounted to present value after unmatured interest has been disallowed pursuant to § 502(b)(2)." App., at 31.

Judge Smith dissented. "The majority's reasoning today unnecessarily casts doubt on a long-standing, broadly-recognized, and well-justified principle arising under the Bankruptcy Code: that in order to avoid a windfall for certain creditors, claims based on future obligations should be discounted to present value before those obligations become eligible for immediate distribution." App., at 32. "[A]s the majority itself notes, insofar as the majority's reasoning does not appear to depend on the future obligations taking the form of interest-bearing loan obligations, the majority's reasoning places our court at odds with the reasoning of all other courts to address these issues." *Id.*, at 45.

In Judge Smith's view, § 502(b)(2) acts to accelerate all remaining principal payments, so they are presently due and thus need not be discounted. App., at 37. Consequently, he agreed that principal amounts of interest-bearing obligations should not be discounted. *Id.*, at 42. In this case, however, Judge Smith interpreted the underlying guarantee issued by Oakwood to create a unified payment obligation, not separable principal and interest payments. *Id.*, at 46-51. Therefore, he concluded, the Bankruptcy Court had correctly discounted the stream of payments to present value, and that aspect of its ruling should be affirmed. *Id.*, at 55. The Bankruptcy Court was

incorrect to disallow interest payments, because in truth there was no interest, but JPMorgan did not appeal that point and so had waived it. *Id.*, at 54-55.

REASONS FOR GRANTING THE PETITION

I. The Circuits Are Divided Over The Interpretation Of 11 U.S.C. § 502(b)

The decision below creates a 2-1 split in the circuits, as well as a broader split between the Third Circuit and the bankruptcy courts, over the interpretation of § 502(b). This divide among the Circuits on an important issue of bankruptcy law merits the Court's review. *See Pennsylvania Dep't of Pub. Welfare* v. *Davenport*, 495 U.S. 552, 557 (1990) (granting certiorari "[t]o address a conflict among Bankruptcy Courts on this issue"); *Howard Delivery Serv., Inc.* v. *Zurich Am. Ins. Co.*, ___ U.S. ___, 126 S. Ct. 2105, 2110 (2006) (granting certiorari "to resolve a split among the Circuits concerning the priority status" of claims in bankruptcy).

Until the decision below, it was settled law that the text of § 502(b) unambiguously requires bankruptcy courts to discount all future obligations to present value as of the date of the bankruptcy petition. *See CF&I*, 150 F.3d, at 1300 ("[T]he Bankruptcy Code mandates that all claims for future payment must be reduced to present value"); *Pension Benefit Guar. Corp.* v. *Belfance* (*In re CSC Indus., Inc.*), 232 F.3d 505, 508 (CA6 2000) ("[T]he bankruptcy court must value present claims and reduce claims for future payment to present value. . . ."); *In re O.P.M. Leasing Servs., Inc.*, 79 B.R. 161, 165 (S.D.N.Y. 1987) ("clear language of § 502(b)" requires discounting); *In re*

Thomson McKinnon Sec., Inc., 149 B.R. 61, 75 (Bankr. S.D.N.Y. 1992) (future payments "must be discounted"); *In re Loewen Group Int'l, Inc.*, 274 B.R. 427, 432 (Bankr. D. Del. 2002) ("[T]he plain language of § 502(b) requires the Court to discount the Claims to present value as of the Petition Date"); *Pereira* v. *Nelson* (*In re Trace Int'l Holdings, Inc.*), 284 B.R. 32, 38 (Bankr. S.D.N.Y. 2002) ("unambiguous language" of § 502(b) requires discounting). *Cf. Kucin* v. *Devan*, 251 B.R. 269, 273 (D. Md. 2000) (applying discounting).

Both the Sixth and the Tenth Circuits recently reiterated that § 502(b) unambiguously requires courts to discount future payment obligations to present value. *See Belfance*, 232 F.3d, at 508 (CA6); *CF&I*, 150 F.3d, at 1300 (CA10). In *CF&I*, the Tenth Circuit considered a claim held by the Pension Benefit Guaranty Corporation against the debtor for future payments to fund pension benefits. Interpreting § 502(b), the Tenth Circuit held that "[t]o insure the relative equality of payment between claims that mature in the future and claims that can be paid on the date of bankruptcy, the Bankruptcy Code *mandates* that *all* claims for future payment must be reduced to present value." *Ibid.* (emphasis added). Later, the Sixth Circuit addressed the same type of claim for future funding of pension benefits and reached the same conclusion. It held that, because § 502(b) requires the court to "'determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition,'" "[t]herefore, the bankruptcy court *must* value present claims and reduce claims for future payment to present value. . . ." *Belfance*, 232 F.3d, at 508 (emphasis added) (quoting 11 U.S.C. § 502(b)).

The Third Circuit's finding of textual ambiguity in § 502(b)—and its refusal to discount some future payment obligations—creates a clear split with its sister circuits. Indeed, the Third Circuit acknowledged that the decisions of other courts finding § 502(b) "clear and unambiguous" are "contrary to our holding." App., at 24 n. 13. Respondents may attempt to minimize the split by contending that other courts have addressed only non-interest-bearing future obligations, while the decision below addresses interest-bearing claims. But that is a distinction without a difference, because there is no reasoned way to distinguish the two types of claims for purposes of discounting the principal. *See infra*, at 15-16. In addition, the conflict is in fact plain. The Sixth and Tenth Circuits both concluded that § 502(b) requires *all* future claims to be discounted, whereas the Third Circuit declared: "We reject . . . [the] baseline conclusion that 11 U.S.C. § 502(b) is clear and unambiguous." App., at 28. This irreconcilable difference in the interpretation of one of the key provisions in the Bankruptcy Code warrants review. *See Saxbe* v. *Washington Post Co.*, 417 U.S. 843, 846 (1974) (citing "an apparent conflict in approach to the question" between two circuits); *United States* v. *Nat'l Bank of Commerce*, 472 U.S. 713, 719 (1985) (citing a "conflict, directly or in principle, with decisions of other Courts of Appeal").

II. The Decision Below Is Incorrect And Introduces Confusion Into A Provision That Is Central To The Administration Of The Bankruptcy Code

The decision of the Third Circuit is clearly incorrect, and it introduces significant confusion into the application

of a provision that is central to the administration of the Bankruptcy Code.

The Third Circuit's decision is incorrect first because the plain language of § 502(b) requires the discounting of all future payments to present value: "[T]he court . . . *shall* determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition." 11 U.S.C. § 502(b) (emphasis added.) The term "shall" is mandatory, not permissive. *Lexecon Inc.* v. *Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998). It "normally creates an obligation impervious to judicial discretion," *ibid.*, and its presence in § 502(b) is not softened by any other textual cues. Nor is there any ambiguity regarding *what* the text of § 502(b) requires. Its instruction to determine the amount of claims "as of the date of the filing of the petition" can only mean to discount claims to present value. *See, e.g., Belfance*, 232 F.3d, at 508 (quoting 11 U.S.C. § 502(b)). "Were postpetition claims always to be allowed in full . . . [the] language would be mere surplusage." *In re O.P.M. Leasing Servs., Inc.*, 79 B.R., at 165.

Even if the text were not clear, the fundamental bankruptcy policy of equal treatment of creditors would settle the issue and require discounting. *Howard Delivery Serv.*, 126 S. Ct., at 2109 ("[W]e are mindful that the Bankruptcy Code aims, in the main, to secure equal distribution among creditors."). A creditor who holds a claim to be paid $1,000 in the future is in a fundamentally different position than a creditor who holds a claim to be paid the same $1,000 immediately. Because of the time value of money, the future claim must be discounted to present value—else, bankruptcy would systematically favor creditors with future claims at the expense of creditors

with present claims. The Third Circuit not only acknowledged this principle, it agreed "wholeheartedly" that "future liabilities must be reduced in some way to reflect the time value of money. . . ." App., at 28. There is no mechanism in the Code to accomplish this reduction other than § 502(b).

What drove the Third Circuit to fight against the plain language and settled policy of § 502(b) was its belief that § 502(b)(2)'s disallowance of "unmatured interest" is simply another form of discounting to account for the time value of money, so that once interest has been disallowed it is inequitable to discount the principal. App., at 28. But that belief is simply incorrect. Section 502(b)(2) codifies the age-old rule, adopted from "the English bankrupt system[,] . . . that everything stops at a certain date. Interest [is] not computed beyond the date of the commission." *Sexton* v. *Dreyfus*, 219 U.S. 339, 344 (1911) (Holmes, J.). One justification for the rule of § 502(b)(2) is that it avoids "the administrative inconvenience of continuous recomputation of interest causing recomputation of claims." *Vanston Bondholders Protective Comm.* v. *Green*, 329 U.S. 156, 164 (1946); *see also City of New York* v. *Saper*, 336 U.S. 328, 330 (1949) (same). Another justification is that the rule protects the debtor's estate against penalties for delayed payment, because delay is often necessary for the protection and preservation of the estate for the creditors as whole. *Vanston*, 329 U.S., at 163; *see also In re Fesco Plastics Corp.*, 996 F.2d 152, 155 (CA7 1993). In addition, the rule preserves the respective positions the creditors hold as of the date of the petition. Creditors with higher interest rates cannot gain advantage by delaying distribution to get a greater percentage of the estate; creditors with lower rates need not push the

proceedings ahead to protect their interest. The rule thus ensures that creditors suffer "neither gain nor loss caused solely by delay." *Vanston*, 329 U.S., at 164. Section 502(b)(2) is thus wholly consistent with the policy of treating creditors equally—just not in the way that the Third Circuit erroneously believed.

The Third Circuit's erroneous belief that § 502(b)(2) is a discounting rule led it to interpret the actual discounting provision—§ 502(b)—in a way that violates not only the policy of equal treatment of creditors, but also the fundamental rule that bankruptcy law does not grant creditors any greater rights than they possessed on the underlying obligations. First, the interpretation violates equality by refusing to discount JPMorgan's claims for future payment obligations, when all other claims for future obligations are discounted. Second, the Third Circuit's application of § 502(b) ignores the rule that "[c]reditors' entitlements in bankruptcy arise in the first instance from the underlying substantive law creating the debtor's obligation. . . ." *Raleigh* v. *Illinois Dep't of Revenue*, 530 U.S. 15, 20 (2000). JPMorgan stipulated that the securitization agreements entitled it only to future payments of principal, without any right to accelerate those payments upon default. The Third Circuit overrode that contractual agreement by treating the payments as if they were accelerated—and it therefore violated this Court's repeated instruction that "[b]ankruptcy courts are not authorized in the name of equity to make wholesale substitution of underlying law controlling the validity of creditors' entitlements, but are limited to what the Bankruptcy Code itself provides." *Id.*, at 24-25. Even if the Third Circuit had been correct in its view of the equities, it still had no authority to implement its view by ignoring the terms of the Bankruptcy Code. As

this Court recently explained, "Our unwillingness to soften the import of Congress' chosen words even if we believe the words lead to a harsh outcome is longstanding. It results from 'deference to the supremacy of the Legislature, as well as recognition that Congressmen typically vote on the language of a bill.'" *Lamie* v. *United States Tr.*, 540 U.S. 526, 538 (2004) (quoting *United States* v. *Locke*, 471 U.S. 84, 95 (1985) (citation omitted)). Nothing in the Code allowed the Third Circuit to legislate equity. Instead, the unambiguous language of § 502(b) enacted by Congress required the court to discount JPMorgan's claims to present value.

The Third Circuit's attempt to create ambiguity in § 502(b)'s discounting rule only highlights the incorrectness of its interpretation. Focusing on the term "amount" in § 502(b)'s instruction to "determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition," the court noted that, in other places, the Code uses the term "value" when it requires discounting. The court therefore inferred ambiguity from the different term. The difference in terminology, however, is explained not by a difference in the discounting rule but by a difference in context. The Code uses "value" to describe property distributions and "amount" to describe dollar claims, so that the value of property distributions can accurately be compared to the amount of allowed claims. *See*, *e.g.*, 11 U.S.C. §§ 1129(a)(7)(A)(ii) ("property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive"); 1225(a)(4) ("the value, as of the effective date of the plan, of property to be distributed under the plan . . . is not less than the amount that would be paid on such claim"); 1225(a)(5)(B)(ii) ("the value, as of the effective

date of the plan, of property to be distributed . . . is not less than the allowed amount of such claim"); 1225(b)(1)(A) ("the value of the property to be distributed under the plan . . . is not less than the amount of such claim"); 1325(a)(4), (a)(5)(B)(ii), and (b)(1)(A) (same as § 1225); 1328(b)(2) ("the value, as of the effective date of the plan, of property . . . is not less than the amount that would have been paid on such claim").

The textual source of the discounting command throughout the Bankruptcy Code is neither "value" nor "amount," but instead the instruction to calculate the one or the other "as of" a certain date. That instruction—contained in § 502(b) just as in every other section cited by the Third Circuit—unambiguously requires the discounting of future obligations. It is understandable, moreover, that the discounting instruction is applied to the "amount" of a claim only in § 502(b) and nowhere else in the Code. Nowhere else is the amount of the claim in flux. Claims are filed under § 501, settled under § 502, and used as a static dollar amount everywhere else. Section 502's whole purpose is to produce the dollar amount of allowed claims against which all distributions of property are subsequently measured. Congress's use of the term "amount" in connection with discounting in § 502(b) is thus not only proper, it is necessary. It could not have used "value" in § 502(b) without creating confusion throughout the rest of the Code.

Because the text of § 502(b) is clear, the Third Circuit erred in looking to legislative history. As this Court recently concluded, "We should prefer the plain meaning [of the Bankruptcy Code] since that approach respects the words of Congress. In this manner we avoid the pitfalls that plague too quick a turn to the more controversial

realm of legislative history." *Lamie*, 540 U.S., at 536. Even if consulting legislative history were permissible, the legislative history cited by the Third Circuit is unpersuasive. According to the legislative history, § 502(b) contains an "irrebutable presumption that the discounting rate and the contractual interest rate (*even a zero interest rate*) are equivalent." H.R. Rep. No. 95-595, at 353 (1977) (emphasis added). If this were correct, then future obligations could *never* be discounted: If the interest rate is greater than zero, only the interest is disallowed; if no interest is contractually allowed, then the discounting rate is irrebutably zero. No court believes this. Even the Third Circuit rejected the view that § 502(b) "*never* authorizes discounting a claim to present value." App., at 22. The Court should place no weight on legislative history that so plainly contradicts the language, history, and fundamental policies of the Code.[2]

In another recent case involving the interpretation of the Bankruptcy Code, this Court noted that "the uncertainty and increased complexity that would be generated by the trustee's position is another reason to stick with the simpler rule." *Raleigh*, 530 U.S., at 26. The same is true here. What is striking and ultimately indefensible about the Third Circuit's interpretation of § 502(b) is that, having identified a claimed textual ambiguity, the court never resolves it but instead claims authority to read § 502(b) sometimes one way and sometimes another.

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[2] Similarly, the Court need not consider the text of prior statutes, because the text of the Code is clear. "The starting point in discerning congressional intent is the existing statutory text, and not the predecessor statute[s]." *Lamie* v. *United States Tr.*, 540 U.S. 526, 534 (2004) (citation omitted).

Sometimes § 502(b) requires discounting, other times not—and there are no textual cues to help courts distinguish the one from the other. This approach introduces unnecessary uncertainty and complexity into the Code. The simpler rule, and the one consistent with the text of § 502(b), the history of the Code, and the policies of equality among creditors and respecting the underlying obligations created by state law, is to discount all future obligations to present value.

The uncertainty introduced by the Third Circuit into a fundamental provision of the Bankruptcy Code is reason not only to reject the Third Circuit's interpretation, but also to review it. In the year ending in December 31, 2005 alone, there were 2,078,415 bankruptcy filings (http://www.uscourts.gov/bnkrpctystats/statistics.htm). The power to allow claims is of "basic importance in the administration of a bankruptcy estate" in all these cases. *Gardner* v. *New Jersey*, 329 U.S. 565, 573 (1947). The Court should grant review of the decision below to settle this central issue of bankruptcy law. *Saper*, 336 U.S., at 328 (granting review to consider issue "of considerable practical importance in the administration of the Bankruptcy Act.").

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 05-2032 & 05-2033

IN RE: OAKWOOD HOMES CORPORATION,
Debtor

JEFFERSON-PILOT LIFE INSURANCE COMPANY; JEFFERSON-PILOT FINANCIAL INSURANCE; TYNDALL PARTNERS, LP and TYNDALL INSTITUTIONAL PARTNERS, LP,
Appellants in No. 05-2032

(D.C. Civil Nos. 04-cv-00835, 04-cv-00836, 04-cv-00837, 04-cv-00838 and 04-cv-00839)

*(Amended in accordance with Clerk's Order dated 7/22/05).

IN RE: OAKWOOD HOMES CORPORATION,
Debtor

JP MORGAN CHASE BANK,
Appellant in No. 05-2033

(D.C. Civil Nos. 04-cv-00835, 04-cv-00836, 04-cv-00837, 04-cv-00838 and 04-cv-00839)

On Appeal from the United States District Court
for the District of Delaware
(D.C. Civil Nos. 04-cv-00835, 04-cv-00836,
04-cv-00837, 04-cv-00838 and 04-cv-00839)
District Judge: Honorable Joseph J. Farnan, Jr.

Argued Feb. 21, 2006

Before: McKEE, SMITH, and
VAN ANTWERPEN, Circuit Judges

(Filed: June 9, 2006)

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OPINION OF THE COURT

VAN ANTWERPEN, *Circuit Judge.*

Consolidated before us are two appeals by JP Morgan Chase Bank ("JP Morgan"). JP Morgan challenges the District Court's order affirming the Bankruptcy Court's decision to reduce claims filed by JP Morgan, the trustee for the holders of certain certificates, after objections were filed by the U.S. Bank National Association ("U.S. Bank"), the indenture trustee for the holders of certain more senior notes. The Bankruptcy Court's dual, but related, rulings first disallowed any part of JP Morgan's claims for unmatured interest arising under a Guarantee on the certificates, then further discounted the principal of the

claims to present value. JP Morgan alleges that discounting the principal of the claims to present value is unauthorized by the Bankruptcy Code, and results in inequitable treatment of like creditors. JP Morgan does not appeal the District Court's affirmance of the Bankruptcy Court's disallowance of claims for unmatured interest. We will reverse the order of the District Court with respect to present value discounting of principal.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

A. Oakwood and the Trusts

These appeals arise from the bankruptcy proceedings of Oakwood Homes Corporation ("Oakwood"), a builder and seller of prefabricated homes. Oakwood's subsidiaries frequently extended credit to home-buyers under long-term mortgage arrangements, then securitized these mortgages by selling them to trusts set up for this purpose ("the Trusts").[1] The Trusts issued various certificates in order to raise the money to pay Oakwood for the mortgages. The certificates were serviced by the Trusts with the funds paid by customers under their mortgages. The buyers of the certificates were entitled to periodic payments of principal and interest.

At issue here are certain low-priority certificates issued by several of the Trusts over the course of three years. The certificate holders represented by JP Morgan bought approximately $100 million of these certificates, known as "B-2 Certificates," from underwriters. With such

[1] The Trusts were known as Real Estate Mortgage Investment Conduit securitization trusts, or REMIC trusts.

low payment priority relative to other issued certificates, the B-2 Certificates were understandably difficult to market. Oakwood therefore provided a Guarantee of payment for the B-2 Certificates, whereby Oakwood promised to cover any shortfalls in payments by the Trusts of principal or interest. For example, in the Guarantee for one of the Trusts at issue here, Oakwood agreed to "unconditionally and absolutely guarantee [] the full and prompt payment to the Trustee on or prior to the Remittance Date relating to each Distribution Date of the Limited Guarantee Payment Amount."

The B-2 Certificates, and distributions thereon, were governed by the Pooling and Servicing Agreement for each Trust. One Trust at issue here, the 1997-D Trust,[2] issued certificates with a total principal value of over $250 million, of which about $10 million were B-2 Certificates. The Pooling and Servicing Agreement explicitly provided for "the distribution of the principal of and interest on the Certificates in accordance with their terms." The agreement specified the applicable interest rates, distribution dates, and priorities for each of the classes of issued certificates, including the B-2 Certificates. On each distribution date, the trustee of the Trust was instructed to distribute principal and interest payments to each class, in order of priority. Distribution dates stretched almost to the year 2030.

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[2] We, like the parties, will use the Guarantee and Pooling and Service Agreement applicable to the 1997-D Trust as representative of the documents defining all of the Trusts at issue.

The distributions from the Trusts fundamentally depended on the mortgage customers making their scheduled mortgage payments to the Trusts. This did not happen in many cases. The future ability of the Trusts to make principal and interest payments to the B-2 Certificate holders, who had the lowest payment priority, therefore came into doubt. Such nonpayment would trigger Oakwood's obligation under the Guarantees to ensure full payment of principal and interest to the B-2 Certificate holders.

B. Bankruptcy Proceedings

Oakwood filed for Chapter 11 bankruptcy protection on November 15, 2002, in the United States Bankruptcy Court for the District of Delaware. Various creditors filed proofs of claim with the Bankruptcy Court. U.S. Bank, for example, filed proofs of claim as indenture trustee for holders of $300 million of more senior notes issued directly by Oakwood. JP Morgan filed proofs of claim on behalf of B-2 Certificate holders, seeking over $1 billion. The holders of $605 million of these claims, covered under different Guarantees than those at issue here, settled their claims, leaving about $400 million in claims remaining.

JP Morgan alleged that because the Trusts were unable to fully service the B-2 Certificates, Oakwood was, and would continue to be, liable for the principal and interest shortfalls on the Certificates by virtue of the Guarantee. Of the $400 million in claims, about $116 million was attributable to future shortfalls in the Trusts' payment of *principal* to the B-2 Certificate holders. Another $1 million was attributable to shortfalls in the

Trusts' payment of *interest,* due *before* Oakwood filed its bankruptcy petition ("pre-petition interest"). The remainder was attributable to future shortfalls in *interest* payments, that would come due *after* the petition date ("post-petition interest" or "unmatured interest").

U.S. Bank filed objections to JP Morgan's claims on October 10, 2003, and November 21, 2003, pursuant to the objection provisions of 11 U.S.C. § 502. U.S. Bank alleged (1) JP Morgan's claims should not include post-petition interest; and (2) JP Morgan's remaining claims for principal payments should be discounted to present value as of the bankruptcy petition date. The parties stipulated to the shortfalls in principal and interest payments that Oakwood, as Guarantor, would be obligated to pay at various distribution dates on each Trust's B-2 Certificates.

Following several hearings, the Bankruptcy Court issued two rulings relevant here. First, the Bankruptcy Court at a hearing on November 26, 2003, disallowed any portion of JP Morgan's claims attributable to post-petition interest, totaling hundreds of millions of dollars, pursuant to 11 U.S.C. § 502(b)(2) ("allow such claim . . . except to the extent that . . . such claim is for unmatured interest"). Second, the Bankruptcy Court at a hearing on January 23, 2004, ruled without discussion or explanation that the portion of the claims attributable to *principal* shortfalls ($116,370,915) should be discounted to present value pursuant to language in 11 U.S.C. § 502(b) directing a court to "determine the amount of such claim . . . as of the date of the filing of the petition." The Bankruptcy Court entered orders on May 6, 2004, reflecting these rulings,

ultimately allowing JP Morgan's claims for pre-petition interest and $30,491,930 in principal claims.[3]

While immaterial to this appeal, we note that the Bankruptcy Court approved a reorganization plan for Oakwood on April 16, 2004. JP Morgan will ultimately receive a distribution equal to between 37.4% and 50% of its allowed claims.

C. Appeals and Collateral Litigation

Acting now on behalf of the holders of B-2 Certificates allegedly entitled to $95.5 million (of the $116 million at issue in the Bankruptcy Court) in future principal shortfall payments, JP Morgan appealed the Bankruptcy Court's Orders to the District Court for the District of Delaware on May 17, 2004. The District Court affirmed both of the Bankruptcy Court's rulings – disallowing interest and discounting principal – on February 22, 2005.

The District Court rejected JP Morgan's argument that 11 U.S.C. § 502(b) did not require discounting an interest-bearing unmatured principal claim to present value *on top of* disallowing all post-petition interest, and that such a further reduction would be "double discounting." In so doing, the District Court held that § 502(b) was clear and unambiguous in its instruction to discount a claim to present value. The District Court stated that it

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[3] $30,491,930 represents the $116,370,915 in principal shortfalls, discounted to present value using a discount rate of 7.74% chosen by the Bankruptcy Court on March 12, 2004. The parties stipulated to the principal and interest shortfalls, and the corresponding discounted amounts, while reserving their right to appeal the discounting.

was "not persuaded that the distinction between interest-bearing claims and non-interest-bearing claims is significant to the issue at bar." Although the Bankruptcy Court had provided no explanation for its rulings, the District Court concluded that the Bankruptcy Court's previous holding in *In re: Loewen Group International, Inc.*, 274 B.R. 427 (Bankr.D.Del.2002), was "persuasive." The District Court also agreed with the Bankruptcy Court that § 502(b)(2) explicitly disallowed post-petition interest.

JP Morgan appealed the District Court's Order in three separate appeals (representing various B-2 Certificate holders), which this Court consolidated on April 12, 2005. JP Morgan appealed only the decision to discount the principal shortfalls to present value, and did not challenge the disallowance of post-petition interest. This Court dismissed one of the appeals, docketed at No. 05-2034, on December 20, 2005, pursuant to a joint stipulation of the parties. Remaining before us are claims for roughly $30 million (undiscounted) in principal shortfalls for which Oakwood will be liable.

Following the filing of JP Morgan's notices of appeal, the parties continued to litigate collateral effects of the claims issues in the courts below. The Bankruptcy Court ordered the Oakwood estate to reserve $61 million to cover JP Morgan's claims appeals if JP Morgan posted a bond; JP Morgan declined to post the bond, and both the District Court and this Court refused to stay distributions from the estate. The District Court later granted such a stay without bond, then rescinded the stay and affirmed the Bankruptcy Court's ultimate setting of a $0 cash reserve absent posting of a bond. On December 19, 2005, we stayed the appeals of the latter order pending our resolution of the instant appeals.

II. JURISDICTION AND STANDARD OF REVIEW

The Bankruptcy Court had jurisdiction over Oakwood's Chapter 11 filing pursuant to 28 U.S.C. § 157. The District Court had jurisdiction to hear an appeal from a ruling of the Bankruptcy Court pursuant to 28 U.S.C. § 158(a). This Court has jurisdiction over this appeal pursuant to 28 U.S.C. §§ 158(d), 1291.

The parties do not dispute the Bankruptcy Court's factual findings. We exercise plenary review over the Bankruptcy Court's legal decisions, and application of law to fact. *In re Telegroup, Inc.*, 281 F.3d 133, 136 (3d Cir.2002). "Because the District Court sat below as an appellate court, this Court conducts the same review of the Bankruptcy Court's order as did the District Court." *Id.*

III. ANALYSIS

Because JP Morgan did not appeal the District Court's affirmance of the Bankruptcy Court's ruling disallowing any claim for post-petition interest under 11 U.S.C. § 502(b), the only issue before us is whether the Bankruptcy Court erred by "double discounting" when it discounted the principal component of the claims to present value after also having disallowed the post-petition interest portion of the claims. We hold that this was, indeed, error, and we will reverse for the reasons set forth below.

Given the complexity of the issue at hand, we will set out up front the parties' main contentions and our conclusions. JP Morgan alleges that the Bankruptcy Court should not have "double discounted" its claims by disallowing that part of the claims attributable to post-petition interest, and then further reducing the claims by discounting the

remainder to present value. U.S. Bank argues that discounting to present value is required by the clear and unambiguous language of 11 U.S.C. § 502(b), which instructs a court to "determine the amount of such claim . . . as of the date of the filing of the petition," regardless of whether the court has already reduced the claim by disallowing post-petition interest under § 502(b)(2). U.S. Bank also argues that § 502(b)(2) is irrelevant to the issue of discounting because the claims only arise under a Guarantee, and not from an obligation to pay separable interest plus principal.

We conclude that JP Morgan's claims involve separable interest and principal, and not merely a single future liability on Oakwood's part that would be discounted to reflect the time-value of money. We find that 11 U.S.C. § 502(b) is far from clear and unambiguous in light of other sections of the Bankruptcy Code, and the admitted different plain meanings of the words "amount" and "value." Inquiry into the legislative history of the provision shows that the Bankruptcy Court could have either disallowed post-petition interest or discounted the entire claim to present value – but not both. We note that our colleague in dissent is in agreement on the latter part of this proposition – that both disallowing post-petition interest and discounting the claim to present value would be impermissible and inequitable double discounting.

A. The Claims

On appeal, appellee U.S. Bank attempted to fill in and defend the Bankruptcy Court's silent reasoning by alleging that the documents providing the foundation for JP Morgan's claims – the Guarantee and the Pooling and

Servicing Agreement – show a simple agreement to receive money in the future, and that basic economics and the Bankruptcy Code require money received in the future to be discounted to present value. U.S. Bank also contends that because the claims are being made only on the Guarantee, and not on the B-2 Certificates themselves, the claims should be treated similarly as a mere future liability. JP Morgan responds that the documents, as well as the Bankruptcy Court's approach to the claims and U.S. Bank's own litigation strategy and admissions, prove that the claims are for future payments of separable principal and interest. We agree.

We begin with the documents themselves. The Pooling and Service Agreement, which governs the B-2 Certificates at issue here, clearly defined the Certificates in terms of principal and interest distributions at set dates. *See, e.g.*, 1997-D Pooling and Service Agreement, at § 3 (defining the certificate classes, their pass-through rates, and initial principal balances); *id.* at § 5 (setting out the order of priority for principal and interest payments on each distribution date); *id.* at § 10 (stating that "[i]nterest on the . . . Class B-2 Certificates will be computed on the basis of a 360-day year consisting of twelve 30-day months"). Based on their governing documents, the B-2 Certificate holders were intended to be entitled to both principal and interest payments throughout the certificate lifetime.

The fact that the claims here arise only because of Oakwood's obligations under the Guarantee does not change the fundamental economic nature of the B-2 Certificate holders' bargained-for transaction. The Guarantee applicable to the 1997-D Trust B-2 Certificates states that Oakwood "unconditionally and absolutely

guarantees the full and prompt payment . . . of the Limited Guarantee Payment Amount (as such term is defined in the Pooling and Service Agreement), if any" for each scheduled distribution date. Turning back to the Pooling and Service Agreement, we see that "Limited Guarantee Payment Amount" is defined as follows:

> "With respect to any Distribution Date, *the amount* after giving effect to the allocation of the Available Distribution Amount for such date, *equal to the amount of shortfalls* in collections on the Assets otherwise distributable on such Distribution Date *not in excess of the sum* of (a) *any unpaid Interest* Distribution Amount, Carryover Interest Distribution Amount, Writedown Interest Distribution Amount and Carryover Writedown Distribution Amount distributable on such Distribution Date . . . and (b) *any unpaid principal amounts* payable on such Distribution Date. . . ."

1997-D Pooling and Service Agreement, at § 2 (emphases added). After parsing this rather dense language, the Guarantee reduces to the following: Oakwood promised to cover any shortfall resulting from the Trust's inability to make distributions of *interest and principal* to the B-2 Certificate holders.[4]

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[4] We also take note of the Declaration of Oakwood's Executive Vice President, filed with the Bankruptcy Court, setting forth his understanding of the Guarantee as the supervisor of Oakwood's securitization operations. The Declaration repeatedly states that the Guarantees were intended to ensure the distribution of principal and interest to the B-2 Certificate-holders in the event of a shortfall. Moreover, according to the Declaration, Oakwood's financial statements listed liability under the Guarantees in an amount that "reflects potential payments [by Oakwood] of both principal and interest on the B-2 Certificates."

We note that the approach of the Bankruptcy Court throughout this litigation illustrates JP Morgan's claims for future, separable, payments of principal and interest, and not simply for a lump sum of money payable in the future, as U.S. Bank would have us believe. The Bankruptcy Court allowed the portion of JP Morgan's claims attributable to pre-petition interest; disallowed the portion attributable to post-petition interest; and then treated the principal portion separately. The Bankruptcy Court similarly stated that it was irrelevant whether the claim arose against a guarantor instead of a primary obligor. Hearing, Bankruptcy Court, November 26, 2003. U.S. Bank itself urged this approach – separating interest and principal – throughout proceedings in this Court, the District Court, and the Bankruptcy Court.

We do not accept U.S. Bank's argument that simply because the claims technically arise from the Guarantee, we should not treat them like normal claims based on an instrument obligating the payor to make periodic distributions of principal and interest. The Guarantee itself refutes this stance, and U.S. Bank has consistently taken the contrary position. As we have noted above, the Guarantee obligates Oakwood to take over payment of principal and interest to B-2 Certificate holders in the event of any shortfalls. This places Oakwood, the guarantor, in exactly the same position as the Trusts, the primary obligors, with respect to the obligation to make these principal and interest payments.

We conclude that as a matter of economics based on the governing B-2 Certificate documents, JP Morgan's claims consist of separable interest and principal components, and do not merely represent a singular future liability. We must still decide, though, whether 11 U.S.C.

§ 502(b) requires discounting the principal component of those claims after the interest component has already been disallowed under § 502(b)(2).

B. 11 U.S.C. § 502(b)

The Bankruptcy Court held, and the District Court affirmed, that even after JP Morgan's claims for post-petition interest were disallowed, the principal owed under the Guarantee should be discounted to present value as of the petition date. In this limited appeal,[5] we express no view on whether the Bankruptcy Court correctly disallowed post-petition interest pursuant to 11

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[5] JP Morgan did not appeal the 11 U.S.C. § 502(b)(2) interest disallowance portion of the District Court's Order. Unlike our dissenting colleague, we do not believe that this strategic decision to appeal only the discounting substantially affects this appeal. Each court below addressed JP Morgan's claims in terms of two successive inquiries – whether any post-petition interest should be disallowed, and whether the principal should *then* be discounted. The answer to the former inquiry *has not been challenged* here by JP Morgan. Our colleague in dissent concludes, just as do we, that as a legal matter once § 502(b)(2) is applied to disallow post-petition interest, further reduction by discounting the remaining claim to present value is not permitted. *Dis. Op.* at 13. This *legal* conclusion does not hinge on the *factual* question resolved by the courts below – that the claims did involve post-petition interest – and can be decided independently in JP Morgan's favor.

We must therefore express our confusion at our dissenting colleague's conclusion, *Dis. Op.* at 1-2, that the courts below "did not otherwise err in holding that the B-2 Certificate holders' claims should be discounted to present value," and therefore that reversal is not required. The courts below determined that legally, it was permissible to discount a claim to present value *after* applying § 502(b)(2) to disallow any post-petition interest. The dissent appears to wholeheartedly disagree with this holding, as we read the dissent's conclusion that § 502(b)(2) necessarily implies reduction to present value, and therefore that § 502(b) should not be read to require a *second* discounting. *See Dis. Op.* at 11-14.

U.S.C. § 502(b)(2). We must decide only the narrower issue before us, whether *further* reduction of the claims by discounting is required or allowed by the Bankruptcy Code. We hold that it is not, but our rationale for so holding will require inquiry into various portions of the Bankruptcy Code and their legislative history.

Stated simply, 11 U.S.C. § 502(b) speaks in terms of determining the "amount" of a claim "as of" the petition date. However, given that the remainder of the Bankruptcy Code uses the term "value, as of" to signify discounting to present value, and "amount" and "value" are not synonymous, we cannot say that § 502(b) clearly and unambiguously requires discounting to present value in all situations.

We begin as we must with the plain language of the statute. *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989). First, though, we find it necessary to briefly explain how the Bankruptcy Code processes and allows claims. 11 U.S.C. § 101(5)(A) defines a "claim" as a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secure, or unsecured." We have often said that "claim" was intended to be read very broadly. *E.g., In re: PPI Enters. (U.S.), Inc.*, 324 F.3d 197, 203 (3d Cir.2003). A "creditor or indenture trustee" seeking to make a claim on a bankruptcy estate is instructed to file a proof of claim pursuant to 11 U.S.C. § 501. All claims are presumptively "allowed" in full unless another party in interest in the proceedings files an objection. 11 U.S.C. § 502(a). If such an objection is made, as here, the Bankruptcy Court holds a hearing and reduces the allowable amount of the claim pursuant to the remainder of § 502. Specifically, the

Bankruptcy Court would look to a specific subsection of § 502(b), and as U.S. Bank argues, § 502(b) itself.

This brings us to the minutiae of 11 U.S.C. § 502(b). The Bankruptcy Court appears to have relied first on § 502(b)(2) for the proposition that post-petition interest should be disallowed, and then on § 502(b) overall[6] for the proposition that the principal remainder of the claims should be discounted to present value. JP Morgan contends that this ruling constituted impermissible "double discounting" of its claims. 11 U.S.C. § 502(b) states in pertinent part, with emphases added where relevant to the case at hand:

> "(b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall *determine the amount of such claim in lawful currency of the United States as of the date of filing of the petition,* and shall allow

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[6] We say "appears to have relied on" because the Bankruptcy Court did not place its reasoning on the record. At the November 26, 2003 hearing, the Bankruptcy Court noted after argument that "[w]ith respect to the interest, it is my view that Section 502(b) does apply and interest is not allowable as part of the claim." With respect to discounting to present value, the Bankruptcy Court's sole action on the record was to cut off argument and state "[w]ell, look, my ruling is that they're going to be discounted. So let's just debate how – what rate to apply or the discount rate." Hearing, January 23, 2004.

The parties argued the case to the Bankruptcy Court in terms of 11 U.S.C. § 502(b) and § 502(b)(2), however, and we will assume that these were the bases for that court's holdings. We also note that the primary case cited by U.S. Bank in this dispute, *In re: Loewen Group International, Inc.*, 274 B.R. 427 (Bankr.D.Del.2002), relied on § 502(b) for the decision to discount the relevant claims to present value, and was issued by the same Bankruptcy Court.

such claim in such amount, except to the extent that –

> (1) such claim is *unenforceable* against the debtor and property of the debtor, *under any agreement or applicable law for a reason other than because such claim is contingent or unmatured*;
>
> (2) such claim is for *unmatured interest*;"

In response to JP Morgan's arguments, U.S. Bank contends the Bankruptcy Court, and the District Court in affirming, correctly held that the plain language of § 502(b), ordering a court to "determine the amount of such claim ... as of the date of filing of the petition," requires a Bankruptcy Court to discount a claim to present value regardless of whether § 502(b)(2) has already led the Bankruptcy Court to disallow the interest portion of the claim. JP Morgan responds that § 502(b) is far from clear and unambiguous when read holistically with the rest of the Bankruptcy Code, and that the legislative history behind § 502(b)(2), along with basic economics, shows the Bankruptcy Court erred.

1. Clear and Unambiguous?

Contrary to U.S. Bank's assertions, and the District Court's conclusion below, we do not believe 11 U.S.C. § 502(b) is clear and unambiguous. Inquiry into the rest of the Bankruptcy Code and the legislative history of 11 U.S.C. § 502(b) is therefore appropriate. *In re Price,* 370 F.3d 362, 369 (3d Cir.2004) (citing *United States v. Fisher,* 6 U.S. (2 Cranch) 358, 386 (1805)). The Supreme Court has instructed us to view the Bankruptcy Code holistically, instead of in isolated sections. *United Sav. Ass'n of Texas v.*

Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 371 (1988).

Viewed against the remainder of the Bankruptcy Code, "amount of such claim . . . as of the date of the filing of the petition" simply does not clearly and unambiguously require discounting a claim to present value. Rather, "the *full face amount* of a debt instrument is the *proper amount of claim* in a bankruptcy case" where, as here, original issue discount is not at issue.[7] 4-502 COLLIER ON BANKRUPTCY ¶ 502.03 (5th rev. ed.2005) (emphases added).

We are not convinced that a plain reading of § 502(b) supports the Bankruptcy Court's conclusion. "The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997). Neither "amount" nor "value" is defined in the Bankruptcy Code. *See* 11 U.S.C. § 101 (definitions). At argument, however, U.S. Bank conceded that "amount" does not mean the same thing as "value."[8]

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[7] Original issue discount reflects the fact that a claimant might have paid less than the face value on a note, and could therefore only recover in bankruptcy up to the amount actually paid. The interest portion of such a note would need to be similarly pro-rated for purposes of disallowing post-petition interest. To the extent that the B-2 Certificate holders may have similarly paid less than the face value for their notes, the parties do not dispute the principal shortfall amounts stipulated to and at issue here.

[8] "Amount" is defined by one dictionary as "the total number or quantity; a principal sum and the interest on it." WEBSTER'S THIRD NEW INT'L DICTIONARY (unabr.1965). "Value," in contrast, is defined as "the monetary worth or price of something; the amount of goods, services, or

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Most significant is how the Bankruptcy Code itself uses "amount" and "value." U.S. Bank argues that "as of the date of the filing of the petition" axiomatically requires that a present value calculation be performed on the "amount" of a claim. However, as JP Morgan correctly notes, where the Bankruptcy Code intends a court to discount something to present value, the Code clearly uses the term "value, as of" a certain date. *See, e.g.,* 11 U.S.C. §§ 1129 ("value, as of the effective date of the plan"), 1173 (same), 1225 (same), 1325 (same), 1328 (same). Many sources support the use of the term "value" for this purpose; *none* support U.S. Bank's contention that "amount . . . as of" also implies a present value calculation.[9] For example, *Collier on Bankruptcy,* in describing another section of the Bankruptcy Code, states that:

> "In three places in section 1129(b)(2), and in at least two other places in section 1129, confirmation requires that a creditor or interest holder receive property 'of a value, as of the effective date of the plan' equal to some amount, usually the allowed amount of the participant's claim. *Congress was clear that the use of this term meant that courts were to calculate the 'present value' of the property.*"

7-1129 COLLIER ON BANKRUPTCY ¶ 1129.06 (emphasis added); *id.* at n.3 ("This contemplates a present value analysis that will discount value to be received in the future.") (quoting H.R.Rep. No. 95-595, at 414 (1977)).

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money that something will command in an exchange." BLACK'S LAW DICTIONARY (8th ed.2004).

[9] U.S. Bank has not directed this Court to any other section of the Bankruptcy Code where discounting to present value was intended, and the term "amount" was used.

Thus, 11 U.S.C. § 502(b) does not contain the language used elsewhere in the Bankruptcy Code to require a present value calculation.

U.S. Bank is correct that in each of the Bankruptcy Code sections cited above, the Code refers only to the process by which the holders of already – allowed claims are paid from the bankruptcy estate. These sections permit a court, for example, to confirm a reorganization plan only if a holder of an impaired claim has accepted the plan or "will receive or retain under the plan on account of such claim or interest *property of a value, as of the effective date of the plan,* that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date." 11 U.S.C. § 1129(a)(7)(A) (emphasis added). However, these same sections also refer to the discounting of future cash *installment payments* to present value – virtually the exact financial situation we address today – by using the language "deferred cash payments of a value, as of the effective date of the plan," or "regular installment payments in cash – of a total value, as of the effective date of the plan." 11 U.S.C. §§ 1129(a)(9)(B)(i)-(C)(i). Where the Code speaks of discounting cash streams to present value, it speaks in terms of "value, as of" a certain date. It does not use "amount . . . as of."

Viewing the Bankruptcy Code holistically, we cannot say that the language of 11 U.S.C. § 502(b) clearly and unambiguously requires the same discounting to present value as is required in other sections of the Code.[10] *See also*

[10] Where Congress has explicitly mandated such discounting, commenters have taken note. *Collier on Bankruptcy* is replete with references to the present value calculations required by the Code

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7-1129 COLLIER ON BANKRUPTCY ¶ 1129.06 (emphasis added) ("The relevant date for *all determinations of present value* required by the Code is the 'effective date' of the plan.").

We do not hold here that 11 U.S.C. § 502(b) *never* authorizes discounting a claim to present value, but instead that the statute does not clearly and unambiguously *require* it for all claims evaluated under § 502.[11] In general, we of course acknowledge that money received today is more valuable than money negotiated to be received in the future, and reduction in recognition of that basic economic fact may sometimes be appropriate. The subsections of § 502(b) encompass various financial circumstances, however, as our colleague in dissent points

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sections mentioned above. *See, e.g.*, 7-1129 COLLIER ON BANKRUPTCY ¶ 1129.03; *id.* ¶ 1129.04; *id.* ¶ 1129.06; 8-1225 COLLIER ON BANKRUPTCY ¶ 1225.02; 8-1325 COLLIER ON BANKRUPTCY ¶ 1325.06. Yet, in discussion of 11 U.S.C. § 502(b), we learn that it means something far different. The task of "determin[ing] the amount of such claim" is straightforward if the claim is liquidated; if unliquidated or contingent, the claim is estimated under 11 U.S.C. § 502(c), a provision not at issue here, or liquidated by the court. 4-502 COLLIER ON BANKRUPTCY ¶ 502.03. *Nowhere* is discounting to present value mentioned. The second element of 11 U.S.C. § 502(b), determining the amount of the claim "as of the date of the filing of the petition," is explained very simply: "This requirement coincides with other Code sections that make it clear that section 502 applies to a proof of claim only if it reflects a prepetition claim. . . . Accordingly, a proof of claim should contain only claims as of the petition date. . . ." *Id.* Contrary to U.S. Bank's assertions, we do not believe Congress used code in § 502(b) to require discounting to present value where a far more simple meaning to the section accords with general principles of bankruptcy law.

[11] We note that finding a statute does not clearly and unambiguously order action X does not necessarily lead to the conclusion that action X is inappropriate – merely that further inquiry into other sources is needed.

out; therefore we must look at the interplay between the subsection at issue here, § 502(b)(2), and § 502(b) as a whole.

C. 11 U.S.C. § 502(b)(2)

The Bankruptcy Court treated the two facets of its ruling as separate and distinct – (1) post-petition interest was disallowed under 11 U.S.C. § 502(b)(2), and then (2) the claims (now consisting only of principal)[12] were discounted to present value, presumably under the direction of § 502(b). JP Morgan argues that the two cannot be separated. We agree. Once the Bankruptcy Court disallowed post-petition interest pursuant to § 502(b)(2), the legislative history of the provision, the economic reality of the transaction, and fundamental tenets of bankruptcy law do not permit further discounting of the principal.

By its terms, 11 U.S.C. § 502(b)(2) applies only to claims involving interest in addition to principal. A note providing for payments of principal-*plus* interest is fundamentally more valuable than a note involving the same principal payments, but *no* interest. A buyer of a note that includes interest surely knows he is bargaining for a more valuable instrument, as does the seller. Contrary to the District Court's assertion, then, "the distinction between interest-bearing claims and non-interest-bearing claims" is highly significant. U.S. Bank could not cite this Court to a

[12] U.S. Bank did not object to the portion of JP Morgan's claims attributable to pre-petition interest, and as that portion of the claims arose in full before the petition date, the Bankruptcy Court did not discount it in any way. For this portion of our analysis, therefore, we will refer to JP Morgan's claims as involving solely post-petition interest and principal coming due after the petition date.

single case from any court that applied discounting to an *interest*-bearing instrument after the post-petition interest had been disallowed under § 502(b)(2).[13]

11 U.S.C. § 502(b)(2) disallows, according to its terms, any portion of a claim attributable to "unmatured interest." We will set out the applicable portion of the legislative history for the Bankruptcy Act of 1978:

> "A proof of claim or interest is prima facie evidence of the claim or interest. Thus it is allowed under subsection (a) unless a party in interest objects. The Rules and case law will determine who is a party in interest for purposes of objection to allowance. . . .
>
> Subsection (b) prescribes the grounds on which a claim may be disallowed. The court will apply these standards if there is an objection to a proof of claim. The burden of proof on the issue of allowance is left to the Rules of Bankruptcy Procedure. . . .

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[13] Instead, U.S. Bank cited myriad cases that discounted to present value *non-interest*-bearing claims. *See, e.g., In re Trace Int'l Holdings, Inc.*, 284 B.R. 32 (Bankr.S.D.N.Y.2002) (deferred compensation without interest); *In re O.P.M. Leasing Servs., Inc.*, 79 B.R. 161 (S.D.N.Y.1987) (non-interest-bearing lease); *In re CSC Indus., Inc.*, 232 F.3d 505 (6th Cir.2000) (non-interest-bearing unfunded benefit liability of debtor to Pension Benefit Guaranty Corp.); *In re CF & I Fabricators of Utah, Inc.*, 150 F.3d 1293 (10th Cir.1998) (same). We acknowledge that several of these courts made sweeping statements declaring 11 U.S.C. § 502(b) to require discounting all claims to present value. However, these courts either conducted no inquiry at all into the issue, or concluded (contrary to our holding above) that § 502(b) was clear and unambiguous. Also, because the courts addressed only non-interest-bearing claims, any statements impacting § 502(b)(2)'s effect on discounting would be dicta.

> Paragraph (2) requires disallowance to the extent that the claim is for unmatured interest as of the date of the petition. Whether interest is matured or unmatured on the date of bankruptcy is to be determined without reference to any ipso facto or bankruptcy clause in the agreement creating the claim. Interest disallowed under this paragraph includes postpetition interest that is not yet due and payable, and any portion of prepaid interest that represents an original discounting of the claim, yet that would not have been earned on the date of bankruptcy. . . .[14]
>
> Section 502(b) thus contains two principles of present law. First, interest stops accruing at the date of the filing of the petition, because any claim for unmatured interest is disallowed under this paragraph. Second, *bankruptcy operates as the acceleration of the principal amount of all claims* against the debtor. One unarticulated reason for this is that *the discounting factor for claims* after the commencement of the case *is equivalent to [the] contractual interest rate on the claim.* Thus, this paragraph *does not cause disallowance of claims that have not been discounted to a present value because of the irrebutable* [sic] *presumption that the discounting rate and the contractual interest rate (even a zero interest rate) are equivalent.*"

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[14] This portion of the legislative history, and the omitted portion that follows, refers to original issue discounting ("OID"), discussed above *supra* note 7, but not at issue in this appeal. We therefore do not accept the dissent's attempt to lessen the weight of the legislative history by claiming it does not address the impact of OID. *Dis. Op.* at 10-11. The snippet of legislative history quoted by the dissent does not, it is true, mention OID – simply because OID is addressed by the previous paragraph, which the dissent does not quote.

H.R.Rep. No. 95-595, at 352-54 (1977) (emphases added); *see also* S.Rep. No. 95-989, at 62-65 (1978) (same).

We make several observations regarding this legislative history. To the extent that the Code in any way contemplates discounting to present value, such discounting is *not permitted* where the claim is for principal plus interest, and the interest has already been disallowed pursuant to § 502(b)(2).

As a matter of economics, the legislative history recognizes that it is irrelevant whether a court applies § 502(b)(2) to disallow unmatured interest, or discounts the *entire amount* (i.e., principal plus interest) to present value – as long as the court performs only *one* such operation and not both, the result is the same.[15] "Although potentially complex, present value can be simplified if a deferred promise to pay bears a market rate of interest; after the math is done, such a note will have a present value equal to its face amount." 7-1129 COLLIER ON BANKRUPTCY ¶ 1129.03.

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[15] We understand our dissenting colleague's observation that contractual interest often encompasses not only a discounting rate, which accounts for the time value of money, but also compensation for the risk of debtor default. *Dis. Op.* at 11-13. For the purpose of the case at bar, however, this "extra" interest factor is irrelevant, as the dissent implicitly recognizes. *See Dis. Op.* at 27 (noting that once the Bankruptcy Court had disallowed post-petition interest pursuant to § 502(b)(2), "it effectively performed not just a discounting operation, but also an operation to eliminate a hypothetical interest rate premium"). The latter interest rate premium reduction was not appealed by JP Morgan. *See supra* note 5. For our purposes today, then, that a discounting operation was performed at all during the disallowance of interest under § 502(b)(2) means that a *second* discounting under § 502(b) is unwarranted.

A (relatively) simple mathematical example shows the equivalence of the two methods. A $1,000 face value note bears an interest rate of 5%, and pays out annually over 10 years. At the end of the 10 years, the buyer/creditor would have received $1,628.89 in principal and interest (i.e., the note's "future value"). Assuming that the seller/debtor filed for bankruptcy on the day of issuance, however, disallowing all post-petition interest pursuant to § 502(b)(2) would yield a principal claim for $1,000. Similarly, discounting the entire claim ($1,628.89) to present value using the contractual rate of interest (5%) *also* yields a claim for $1,000.[16] By contrast, the Bankruptcy Court's approach below (*both* disallowing interest and then discounting to present value) yields a claim for only $613.91.

The point is to recognize what the creditor bargained for, while avoiding a windfall. The key difference between interest- and non-interest-bearing debt is in that bargain – the holder of a *non-interest*-bearing note bargained to receive only his $1,000, spread out over the 10 years. The holder of *interest*-bearing debt, however, bargained for much more than the $1,000-$1,628.89, in fact. Giving him $1,000 today, then, means that by the end of what would have been the note's 10-year lifetime, he could have reinvested at the same theoretical rate of interest, and earned his $1,628.89. A creditor who bargained to receive

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[16] One of the cases cited by U.S. Bank, *In re O.P.M. Leasing Services, Inc.*, 79 B.R. 161 (S.D.N.Y.1987), actually *supports* JP Morgan's argument that disallowing postpetition interest *and* discounting principal to present value is impermissible and inequitable "double discounting." The *O.P.M.* court rationalized discounting a non-interest-bearing lease to present value because it would accomplish the same economic function as disallowing post-petition interest under 11 U.S.C. § 502(b)(2). *Id.* at 167.

only the $1,000 in principal, without interest, would be fully compensated by $613.91, which he would be able to grow into his $1,000 by the end of the 10 years; not so for the creditor who bargained to receive interest, who is shortchanged by only receiving $613.91.

We emphasize that our holding in this case in no way yields a windfall for creditors such as JP Morgan. Instead, the interplay between § 502(b) and § 502(b)(2), as reflected in both the legislative history and basic economics, acknowledges that once unmatured interest has been disallowed, discounting the remainder of the claim to present value would inequitably twice penalize the creditor for the time value of money. We wholeheartedly agree that future liabilities must be reduced in some way to reflect the time value of money, but doing so twice is the "double discounting" complained of by JP Morgan in this case.

We acknowledge, but reject, U.S. Bank and the District Court's near-total, but misplaced. reliance on *In re: Loewen Group International, Inc.*, 274 B.R. 427 (Bankr.D.Del.2002) ("*Loewen*"). *Loewen,* a Bankruptcy Court case, dealt only with non-interest-bearing instruments, and concluded that they should be discounted to present value. We reject, as detailed above, the *Loewen* court's baseline conclusion that 11 U.S.C. § 502(b) is clear and unambiguous. We decline to follow the approach of *Loewen*.[17]

[17] *Loewen* is, of course, not binding on this Court or the District Court. At issue in *Loewen* were "long-term, non-interest bearing, unsecured promissory notes" and non-interest-bearing debt obligations. *Loewen,* 274 B.R. at 429. Contrary to U.S. Bank and the District Court's assertions, the instruments in *Loewen* were *non*-interest bearing – a distinction repeated frequently by the *Loewen* court itself. *See, e.g., Loewen,* 274 B.R. at 430-31 (detailing the installment payment structures as all

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As appealing as it is, we must also reject our dissenting colleague's theory that the reason interest-bearing debt would not be discounted to present value is because future principal is accelerated (once post-petition interest is disallowed under § 502(b)(2)), and becomes presently due debt. *Dis. Op.* at 7.[18] We note that this approach might

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being "without interest"); *id.* at 435 ("claims asserted in respect to non-interest bearing promissory notes"); *id.* at 440 ("[P]art of the parties' economic agreement was that Claimants would receive regular payments over time without interest."); *id.* at 442 n.31 ("The Promissory Notes giving rise to the Claims are non-interest bearing."). The only "interest" mentioned by *Loewen* was interest triggered in the event of default. *Id.* at 429 n.4. The instrument holders did not bargain to receive principal plus interest on the notes. *Id.* at 440.

The *Loewen* court determined that 11 U.S.C. § 502(b) "clear[ly] and unambiguous[ly]" required discounting to present value, *id.* at 433, a contention we have already rejected above. Crucially, however, while the District Court believed differently, even the *Loewen* court understood that interest-bearing obligations should be treated dissimilarly from *non*-interest bearing obligations. *Loewen* refused to consider the legislative history to § 502(b)(2), which we have cited above, in part because it related *only* to § 502(b)(2) and "§ 502(b)(2) is not at issue in this dispute." *Id.* at 433 n.15. We also note that *Loewen* understood the crucial economic distinction, concluding that it was economically appropriate to discount the non-interest-bearing claims because the parties had bargained to receive less than the face value of the notes by not building interest into the bargain. *Id.* at 440. Here, in contrast, the parties bargained to receive interest.

[18] Our dissenting colleague asserts that courts have "traditionally" followed this approach and simply accelerated post-petition principal instead of discounting it to present value in § 502(b)(2) situations. *Dis. Op.* at 5, 13. The three bankruptcy cases found by the dissent have indeed correctly not discounted principal to present value, but as the dissent notes, these courts "have not specified that they were not discounting the principal payments to present value." *Dis. Op.* at 5 n.1. We, unlike those bankruptcy courts, do not have the luxury of this approach, and instead bear the burden of reaching this otherwise correct result by reasoning based on the statutory text and legislative history.

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not lead to the limited result the dissent assumes, if we essay a glance at the *rest* of § 502(b), and not merely at § 502(b)(2). The general rule of both the Bankruptcy Code and § 502(b), as our colleague notes correctly, *Dis. Op.* at 5, 13, is acceleration to the date of filing of the bankruptcy petition, for the purpose of filing a claim – not the *lack* of acceleration.[19] Section 502(b) in particular illustrates this

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Moreover, the bulk of cases cited in the dissent simply do not stand for the proposition asserted. Most importantly, the cases dealt *only* with the ability of a creditor to forcibly accelerate a debt for purposes *other* than determining an allowable claim under § 502(b). In one of the first cases cited, the Bankruptcy Court never once mentioned the concept of discounting a claim to present value under § 502(b), and in fact *rejected* the contention that the debt there was accelerated for the purpose of an usurious interest-spreading analysis. *In re: Auto Int'l Refrigeration*, 275 B.R. 789, 812-14 (Bankr.N.D.Tex.2002), *rev'd in part sub nom. Mims v. Fid. Funding, Inc.*, 307 B.R. 849 (N.D.Tex.2002). We note that in this sense, *Auto Int'l Refrigeration* buttresses our above conclusion, *supra* Part III.B.1, that § 502(b) does not clearly and unambiguously mandate across-the-board discounting to present value.

Another case cited by the dissent, *In re: Payless Cashways, Inc.*, 287 B.R. 482 (Bankr.W.D.Mo.2002), relied on a later-reversed portion of *Auto Int'l Refrigeration* to find that the creditor could not collect a higher rate of interest on debt that had not been affirmatively accelerated. *Payless Cashways* addressed only 11 U.S.C. § 506, and never even mentioned § 502(b)(2), let alone any possibility of discounting to present value. The final case cited, *In re: Manville Forest Prods. Corp.*, 43 B.R. 293, 297-98 (Bankr.S.D.N.Y.1984), *rev'd on other grounds*, 60 B.R. 403 (S.D.N.Y.1986), simply concluded that the debt at issue was accelerated by the filing of a bankruptcy petition, so that no overt acts were needed of the creditor. The *Manville* court was not asked to determine the allowable amount of any claim, but instead to determine whether debt was accelerated before being deaccelerated. Contrary to the dissent's assertions, then, none of these cited cases made even a passing inquiry into the subject we today address, or concluded that discounting was inappropriate.

[19] The legislative history shows that § 502(b) and (b)(2) reflect the basic bankruptcy law tenet that "bankruptcy operates as the acceleration of the principal amount of all claims against the debtor." H.R.Rep. No. 95-595, at 352-54. "Simply stated, the filing of a petition accelerates

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point – subsections (6) and (7) specify claims determined "*without* acceleration," (emphasis added). The default state of all "amounts" under § 502(b) subsections *other* than subsections (6) and (7), then, is acceleration. Under our colleague's approach, all of these "amounts" would be accelerated and presently due, therefore none would be discounted to present value pursuant to § 502(b). What our colleague describes as a "special rule created by § 502(b)(2)," *Dis. Op.* at 19, would instead swallow the general rule, and any discounting language the dissent finds in § 502(b) would become mere surplusage.

We conclude that the language used in § 502(b) does not clearly and unambiguously require discounting an interest-bearing obligation to present value in light of the words' plain meanings and the language used elsewhere in the Bankruptcy Code. The Bankruptcy Court erred: Interest-bearing debt should not be discounted to present value after unmatured interest has been disallowed pursuant to § 502(b)(2).

IV. CONCLUSION

We conclude that the Bankruptcy Court erred in holding, and the District Court erred in affirming, that JP Morgan's claims should be discounted to present value even after the portion of the claims for post-petition interest was disallowed. Accordingly, we will reverse.

SMITH, *Circuit Judge*, dissenting.

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the principal amount of all unmatured claims against the debtor, *whether or not* a clause in a prepetition agreement provides that a bankruptcy filing accelerates the maturity date." 4-502 COLLIER ON BANKRUPTCY ¶ 502.03 (emphasis added).

The majority's reasoning today unnecessarily casts doubt on a long-standing, broadly-recognized, and well-justified principle arising under the Bankruptcy Code: that in order to avoid a windfall for certain creditors, claims based on future obligations should be discounted to present value before those obligations become eligible for immediate distribution. Further, the majority's holding rests on a mischaracterization of the disputed claims: the majority treats the claims as equivalent to principal and interest payments on a loan, when in fact the securitization and guarantee process in this case gave rise to claims that were based on non-interest-bearing future obligations. I respectfully dissent.

In adopting their characterization of the disputed claims, the majority repeats an error committed by both the Bankruptcy Court and the District Court. This mischaracterization of the disputed claims in turn led those courts to erroneously disallow the B-2 Certificate holders' claims to the extent that they were for Oakwood Homes' guarantees of payment for the stipulated shortfalls in the Interest Distribution Amounts. JP Morgan, however, failed to raise this issue on appeal, and therefore there is no opportunity to correct that error.

Because I believe that the Bankruptcy Court and the District Court did not otherwise err in holding that the B-2 Certificate holders' claims should be discounted to present value, the issues actually raised on appeal do not require reversing the District Court's judgment. Accordingly, I would affirm.

I.

The general purpose of bankruptcy is to "administer an estate as to bring about a ratable distribution of assets among the bankrupt's creditors." *Vanston Bondholders Protective Comm. v. Green,* 329 U.S. 156, 161 (1946). Section 502 of the Bankruptcy Code carries out this purpose through a two-step process. Section 502(a) provides that a creditor's claim is deemed allowed unless a party in interest objects. 11 U.S.C. § 502(a). If a party in interest objects to a claim, however, "the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount." 11 U.S.C. § 502(b). Section 502(b) also specifies several exceptions to this general rule, most relevantly that the court shall not allow a claim "to the extent that . . . such claim is for unmatured interest." 11 U.S.C. § 502(b)(2). Traditionally, courts have collectively construed § 502(b) and § 502(b)(2) as creating two distinct tracks for analyzing claims based on future obligations: a general track for claims based on non-interest-bearing future obligations, and a special track for claims based on interest-bearing loan obligations.

A.

When other courts have applied the general rule in § 502(b) to claims based on future obligations, they have discounted such claims to present value. *See In re CSC Indus., Inc.,* 232 F.3d 505, 508 (6th Cir.2001) (holding in a case involving unfunded benefit liabilities under ERISA that "the bankruptcy court must value present claims and reduce claims for future payment to present value"); *In re*

CF & I Fabricators of Utah, Inc., 150 F.3d 1293, 1300 (10th Cir.1998) (same); *In re O.P.M. Leasing Servs, Inc.*, 79 B.R. 161 (S.D.N.Y.1987) (discounting scheduled reimbursement due under lease); *In re Loewen Group Int'l*, 274 B.R. 427, 432-41 (Bankr.D.Del.2002) (discounting future payments owed on a non-interest-bearing promissory note); *In re Trace Int'l Holdings, Inc.*, 284 B.R. 32, 38 (Bankr.S.D.N.Y.2002) (discounting deferred compensation claim). The basic purpose of this discounting practice is to "insure the relative equality of payment between claims that mature in the future and claims that can be paid on the date of bankruptcy." *In re CF & I*, 150 F.3d at 1300; *see also In re Trace*, 284 B.R. at 38 ("Discounting is consistent with the fundamental goal of treating similar claims in the same manner . . . and reflects the economic reality that a sum of money received today is worth more than the same amount received tomorrow. . . . Paying the face amount on an accelerated basis would overcompensate the creditor by enabling him to receive and use the money sooner.").

The courts have properly found the necessary textual support for this discounting practice in the general requirement of § 502(b) that the court "shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount." *See In re CSC*, 232 F.3d at 508; *In re CF & I*, 150 F.3d at 1300; *In re O.P.M.*, 79 B.R. at 165; *In re Trace*, 284 B.R. at 38-39. As the *Trace* Court explained, the "amount of the claim may and often does vary from the *allowed* amount of the claim, the portion eligible for distribution." 284 B.R. at 39 (emphasis in original); *see also In re Johns*, 37 F.3d 1021, 1023 n.1 (3d Cir.1994) ("An 'allowed' claim is one that will serve as the basis for distribution."). Pursuant to the general

instruction in § 502(b), this allowed amount is determined by the value of the claim in United States currency as of the petition date, which requires discounting what were originally future payments to present value. *See In re Trace,* 284 B.R. at 39; *see also In re O.P.M.,* 79 B.R. at 184 ("[A] determination of the amount of such claim cannot be distinguished from a determination of the value of the claim as of the petition date because any valuation of a claim is necessarily embodied in § 502(b) so that the amount of the claim to be allowed is properly ascertained.") (internal quotations and citations omitted).

In short, because payments that were originally due in the future will become eligible for immediate distribution through the bankruptcy process, in order to avoid overcompensating such creditors, the allowed amount of such claims should be determined by discounting the future payments to present value. And the general instruction in § 502(b) provides the necessary textual support for this practice by requiring the court to "determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition."

B.

When the contested claim is based on an interest-bearing loan obligation, however, the courts have disallowed the remaining post-petition unmatured interest payments in accordance with § 502(b)(2), but have not discounted the remaining principal payments to present value. *See, e.g., In re Wyeth Co.,* 134 B.R. 920, 922 (Bankr.W.D.Mo.1991); *see also In re Issaac,* 2005 WL 3939840 at *3 (Bankr.N.D.Ill. Aug. 25, 2005) ("Claims are 'allowed' 'as of the date of the filing of the petition' and

may not include interest that is unmatured as of the petition date. 11 U.S.C. § 502(b)(2). Thus, a loan claim is fixed as of the filing date and includes all principal that will ever become due and interest due only on the filing date.").[20] As one court explained, § 502(b)(2) has been interpreted as accelerating the principal portion of a loan claim:

> Section 502(b)(2) of the Bankruptcy Code, 11 U.S.C. § 502(b)(2), authorizes a creditor to accelerate a claim, to prove the full amount of an indebtedness, including the unmatured portion thereof. Even though only one payment may be due on a note when bankruptcy intervenes and the remaining payments may not become due until well into the future, the creditor is allowed to prove a claim for the entire balance due on the note, plus interest to the date of bankruptcy.

In re Lynch, 187 B.R. 536, 548 (Bankr.E.D.Ky.1995); *see also In re Payless Cashways, Inc.,* 287 B.R. 482, 488 (Bankr.W.D.Mo.2002) ("[T]he legislative history to section 502(b) states that bankruptcy acts as an acceleration of the principal amount of all claims against the debtor."); *In re Auto Int'l Refrigeration,* 275 B.R. 789, 813 (Bankr.N.D.Tex.2002) ("[B]ankruptcy may accelerate the Loan, however, this acceleration is only for the limited purpose of calculating Defendants' claim in the bankruptcy."); *In re PCH Assocs.,* 122 B.R. 181, 198 (Bankr.S.D.N.Y.1990) ("The Note may be

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[20] Although courts typically have not specified that they were not discounting the principal payments to present value, U.S. Bank was not able to identify any other case in which a court disallowed regularly-scheduled interest payments on a loan obligation pursuant to § 502(b)(2) and then discounted the remaining principal payments to present value.

deemed to have been accelerated . . . for the purposes of calculation of the [creditor's] claim in these bankruptcy proceedings."); *In re Manville Forest Products Corp.*, 43 B.R. 293, 297 (Bankr.S.D.N.Y.1984) ("It is a basic tenet of the Bankruptcy Code that '[b]ankruptcy operates as an acceleration of the principal amount of all claims against the debtor.'") (citations omitted).

Accordingly, the practice of allowing an interest-bearing claim subject to § 502(b)(2) without discounting the remaining principal payments to present value does not require an exemption for § 502(b)(2) cases from the discounting rule authorized by the general instruction in § 502(b). Rather, once the remaining principal payments have been accelerated, they have become presently due. Consequently, the general discounting rule authorized by § 502(b) requires no further discounting of the remaining principal payments, because those payment [sic] are no longer due in the future.

This treatment of loan cases subject to § 502(b)(2) is supported by the legislative history of § 502(b)(2), which provides:

> Subsection (b) prescribes the grounds on which a claim may be disallowed. The court will apply these standards if there is an objection to a proof of claim.
>
> . . .
>
> Paragraph (2) requires disallowance to the extent that the claim is for unmatured interest as of the date of the petition. Whether interest is matured or unmatured on the date of bankruptcy is to be determined without reference to any ipso

> facto or bankruptcy clause in the agreement creating the claim. Interest disallowed under this paragraph includes postpetition interest that is not yet due and payable, and any portion of prepaid interest that represents an original discounting of the claim, yet that would not have been earned on the date of bankruptcy. . . .
>
> Section 502(b) thus contains two principles of present law. First, interest stops accruing at the date of the filing of the petition, because any claim for unmatured interest is disallowed under this paragraph. Second, bankruptcy operates as the acceleration of the principal amount of all claims against the debtor. One unarticulated reason for this is that the discounting factor for claims after the commencement of the case is equivalent to the contractual interest rate on the claim. Thus, this paragraph does not cause the disallowance of claims that have not been discounted to a present value because of the irrebuttable presumption that the discounting rate and the contractual interest rate (even a zero interest rate) are equivalent.

H.R.Rep. No. 95-595, at 352-54 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6307-10; S.Rep. No. 95-989, at 62-65 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5848-51.[21]

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[21] The majority cites this legislative history for the proposition that "[t]he general rule of both the Bankruptcy Code and § 502(b) . . . is acceleration to the date of filing of the bankruptcy petition, for the purpose of filing a claim – not the *lack* of acceleration." Maj. Op. at 602 & n.19 (emphasis in original). I find persuasive, however, the reasoning of the *In re O.P.M.* Court, which concluded that because the passage in the legislative history cited by the majority "refers to the policy of disallowing claims pursuant to § 502(b)(2) for *unmatured interest* . . . it is evident, when read in context, that the cited paragraph deals with

(Continued on following page)

But this statement in the legislative history of § 502(b) is misleading for at least two reasons. First, the interest rate stated on the face of a debt instrument may be merely nominal, and the actual bargained-for interest rate may depend on other terms of the instrument. For

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that particular subsection of § 502(b)." *In re O.P.M.*, 56 B.R. at 686 n.4; *see also In re Loewen*, 274 B.R. at 433 n.15 ("[W]hen placed in its proper context, it is apparent that this snippet of legislative history specifically refers to the policy of disallowing claims for unmatured interest under § 502(b)(2). . . . Although . . . other courts have relied upon the legislative history of § 502(b) for guidance, those courts have done so in the process of explaining why claims for unmatured interest and/or original issue discount are disallowed pursuant to § 502(b)(2).") (citations omitted). This conclusion is further buttressed by the reference in this passage to accelerating "the principal amount" of a claim, a term that would ordinarily have meaning only if the claim in question was based on a loan obligation subject to the operation of § 502(b)(2).

Finally, I do not agree with the majority that § 502(b)(6) and § 502(b)(7) imply that "[t]he default state of all 'amounts' under § 502(b) subsections *other* than subsections (6) and (7), then, is acceleration." Maj. Op. at 27. Rather, § 502(b)(6) simply provides that "the claim of a lessor for damages resulting from the termination of a lease of real property" cannot exceed "the rent reserved by such lease, without acceleration, for the greater of one year, or 15 percent, not to exceed three years, of the remaining term of such lease . . . [plus] any unpaid rent due under such lease, without acceleration. . . ." *See* § 502(b)(6). Accordingly, the reference to acceleration in § 502(b)(6) is required by the possibility that the termination of a lease would result in the acceleration of rent payments through the application of some damages rule or provision, not because § 502(b) itself contains a default acceleration rule. Similarly, § 502(b)(7) simply provides that "the claim of an employee for damages resulting from the termination of an employment contract" cannot exceed "the compensation provided by such contract, without acceleration, for one year . . . [plus] any unpaid compensation due under such contract, without acceleration. . . ." *See* § 502(b)(7). Again, as with § 502(b)(6), the reference to acceleration in § 502(b)(7) simply negates the possibility that a damages rule or provision would accelerate compensation in the event of a termination of an employment contract, and therefore this language in § 502(b)(7) does not imply that there is a default acceleration rule in § 502(b).

example, the courts have carved out an "original issue discount" rule to reflect the fact that a discount on the purchase price of a debt instrument – the amount actually tendered by the lender to the borrower – can reflect some portion of the interest to be paid on the loan. *See generally In re Pengo Indus., Inc.,* 962 F.2d 543 (5th Cir.1992); *In re Chateaugay Corp.,* 961 F.2d 378 (2d Cir.1992). An "original issue discount" occurs when the nominal interest rate on a debt instrument is set below the market interest rate for an instrument of that type, which results in a market purchase price for that instrument which is less than its face value. *See In re Pengo,* 962 F.2d at 546. The courts have treated this difference between the market purchase price and the face value of such instruments as "in the nature of additional interest," and consequently have considered any such unamortized original issue discounts as claims for unmatured interest within the meaning of § 502(b)(2). *See id.* Again, the courts justify this rule on the basis of the instructions in § 502(b) and § 502(b)(2) and in light of the "economic reality" of the underlying transaction. *See id.*

Another notable problem with this statement in the legislative history is that the interest rate on debt instruments typically will reflect not only a general discounting rate, but also other factors, most prominently the risk that the debtor will not fulfill his payment obligations as per the loan agreement. *See Till v. SCS Credit Corp.,* 541 U.S. 465, 474 (2004) (observing that an interest rate compensates a creditor for the fact that "[a] debtor's promise of future payments is worth less than an immediate payment of the same total amount because the creditor cannot use the money right away, inflation may cause the value of the dollar to decline before the debtor pays, and there is

always some risk of nonpayment."). In other words, typically there is a difference between the interest rate on a loan and the contemporaneous risk-free discounting rate, and this difference reflects in large part a premium that the lender has required the borrower to agree to pay in order to compensate the lender for the risk of nonpayment.[22]

Accordingly, the disallowance of claims to the extent that they are for unmatured interest payments pursuant to § 502(b)(2) carries out at least two distinct financial operations. First, to the extent that a portion of the interest rate reflects the time value of money, the rule in § 502(b)(2) does in fact carry out an operation equivalent to the discounting that the courts would otherwise have performed pursuant to the general instruction in § 502(b). Second, to the extent that a portion of the interest rate contains a premium that reflects the risk of nonpayment associated with the loan, the rule in § 502(b)(2) acts to disallow the lender's claim to the extent that it contains this premium. This second operation is economically justifiable precisely because this premium was conditional: the essence of the bargain struck by the lender was that the lender would receive this premium if the debtor made his payments as provided by the loan agreement, but that the lender would fail to receive this premium in the case of

[22] In that sense, lenders typically take out a series of "bets" on risky borrowers. If a given borrower makes the payments as per the loan agreement, the lender wins the bet on that borrower, and the lender's winnings take the form of the interest rate premium that has been paid by the borrower. Similarly, if a borrower fails to make the payments as per the loan agreement, the lender loses the bet. If a lender has properly assessed the risks associated with its various bets, the interest premiums realized in the cases where the lender wins these bets will compensate the lender for the lost payments in the cases where the lender loses these bets.

nonpayment. Accordingly, it is economically appropriate for the Bankruptcy Code to disallow claims to the extent that they contain such a premium, because the lender's expectation of receiving this premium was conditioned on payment of the loan as provided by the agreement.[23]

Consequently, I agree with the majority's conclusion that bankruptcy courts are not authorized by § 502(b)(2) to "double discount" claims. That is because the traditional construction of § 502(b)(2) authorizes Bankruptcy Courts to accelerate any remaining principal payments in cases governed by § 502(b)(2), and the discounting of future obligations authorized by the general instruction in § 502(b) is in fact already embedded as one of the operations carried out by the disallowance of unmatured interest pursuant to § 502(b)(2). But the rule in § 502(b)(2) is not simply equivalent to a discounting rule. Rather, in the course of disallowing unmatured interest payments, the rule in § 502(b)(2) also carries out additional operations, most notably the disallowance of any conditional interest rate premium associated with the risk of nonpayment.

[23] In other words, the rule in § 502(b)(2) in part reflects the fact that when the debtor enters bankruptcy, the lender has lost his bet on the debtor, and therefore the lender is not entitled to claim payment of the premium that he would have received if he had instead won his bet on the debtor. Indeed, to allow such a claim to the extent that it reflected this premium would be overcompensating the lender, because lenders typically receive their compensation for losing such bets from other loans, namely those in which the lenders made similar bets and actually won (in that the borrower made the scheduled payments, and the lender realized the associated interest rate premium).

II.

Although the majority nominally declines to reach whether § 502(b) ever permits discounting, the majority's reasoning does not appear to be limited to claims based on interest-bearing loan obligations treated under § 502(b)(2). Consequently, the majority's reasoning unnecessarily undermines the traditional and proper construction of the Bankruptcy Code.

The majority explicitly states that "[w]e do not hold here that 11 U.S.C. § 502(b) *never* authorizes discounting a claim to present value. . . ." Maj. Op. at 18-19 (emphasis in original). Nonetheless, such a conclusion appears to be the logical implication of the majority's reasoning.

For example, the majority states, "We are not convinced that a plain reading of § 502(b) supports the Bankruptcy Court's conclusion." Maj. Op. at 16. The majority distinguishes the term "amount" from the term "value,"[24] and argues that:

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[24] The majority defines "value" as "the monetary worth or price of something; the *amount* of goods, services, or money that something will command in an exchange." Maj. Op. at 16 n.8 (emphasis added) (citation omitted). The presence of the term "amount" in their definition of "value" severely undermines the majority's apparent conclusion that "amount" and "value" cannot refer to the same thing. Moreover, the full phrase that we are construing is "the amount of such claim in lawful currency of the United States as of the date of the filing of the petition." 11 U.S.C. § 502(b). Construing this full phrase as referring to the "value" of the claim is thus supported by the opinion's own definition of "value," because § 502(b) requires the court to determine "the amount of . . . money" (namely U.S. currency) which should be "exchanged" (immediately distributed by the estate to the creditor) as the result of allowing the claim.

> [W]here the Bankruptcy Code intends a court to discount something to present value, the Code clearly uses the term "value, as of" a certain date. Many sources support the use of the term "value" for this purpose, *none* support U.S. Bank's contention that "amount . . . as of" also implies a present value calculation.

Maj Op. at 16-17 (citations omitted) (emphasis in original). The majority concludes: "Where the Code speaks of discounting cash streams to present value, it speaks in terms of 'value, as of' a certain date. It does not use 'amount . . . as of.'" Maj. Op. at 18.[25] This textual argument is not limited by its terms to claims based on loan obligations.

Additionally, the majority "decline[s] to follow the approach" of the court in *Loewen,* noting that "*Loewen* is, of course, not binding on this Court or the District Court." Maj. Op. at 24 & n.17. The majority does state that *Loewen* is distinguishable because the promissory notes in that case were not interest-bearing. Maj. Op. at 24 n.17.

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[25] An alternative explanation for this variance is that § 502(b) does not always require discounting to present value, but rather simply authorizes it in certain circumstances. For example, to the extent that § 502(b)(2) provides an alternative mechanism for determining the allowed amount of claims based on interest-bearing loan obligations – namely, by disallowing the interest payments but accelerating the principal payments – § 502(b) would not require further discounting. *See* Part I.B, *supra*. More generally, § 502(b) would not require discounting if the claim was not based on a future obligation, but rather was based on a payment that was presently or past due. In short, the fact that § 502(b) generally contemplates many different types of claims, and that different methods for determining "the amount of such claim[s] in lawful currency of the United States as of the date of the filing of the petition" may apply to different claims, provides a sufficient explanation for why the general instruction of § 502(b) is not written so as to always require discounting.

But the majority further states, "The *Loewen* court determined that 11 U.S.C. § 502(b) 'clear[ly] and unambiguous[ly] required discounting to present value ... a contention we have already rejected above." *Id.* In light of the majority's broad reasoning with respect to the text of § 502(b), this sweeping statement also goes beyond the more limited principle that § 502(b) does require additional discounting in cases subject to the rule in § 502(b)(2).

Finally, the majority states that "[t]he general rule of both the Bankruptcy Code and § 502(b) ... is acceleration to the date of filing of the petition for the purpose of filing [sic] a claim, not the *lack* of acceleration." Maj. Op. at 26 (emphasis in original). If that was in fact a proper construction of § 502(b) in general, rather than merely § 502(b)(2) in particular, then logically no claims would be subject to discounting, because all claims would be presently due.

Collectively, these statements go farther than necessary if we are merely holding that "double discounting" is not allowed in cases that are subject to the rule in § 502(b)(2). And as the majority itself notes, insofar as the majority's reasoning does not appear to depend on the future obligations taking the form of interest-bearing loan obligations, the majority's reasoning places our court at odds with the reasoning of all of the other courts to address these issues. *See* Maj. Op. at 20 n.13.

In light of the basic purposes of the Bankruptcy Code and the general instruction in § 502(b), I would adopt today the traditional view that § 502(b) authorizes discounting claims based on future obligations to present value. I would also affirm the standard practice of not discounting the remaining principal payments in cases

subject to § 502(b)(2), because such discounting in effect has already occurred through one of the operations embedded in the rule in § 502(b)(2), and § 502(b)(2) implicitly operates to accelerate the remaining principal payments.[26]

III.

In light of this traditional construction of § 502(b) and § 502(b)(2), the courts must determine whether a claim for future payments should be treated under the general discounting rule, or rather under the special rule created by § 502(b)(2). In this case, a careful examination of the disputed claims indicates that the Bankruptcy Court and the District Court erred by treating these claims as interest-bearing loan obligations covered by the special rule in § 502(b)(2), and the majority today repeats this error by adopting the same characterization of the disputed claims.

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[26] Accordingly, I agree with the majority that an erroneous double discount has been applied to this claim. However, the mere fact that this double discounting is erroneous does not tell us which of the two discounts was the erroneous discount. In my view, the erroneous discount resulted from the application of § 502(b)(2) to this claim, when in fact no part of the claim was actually for unmatured interest within the meaning of § 502(b)(2). *See* Part IV, *infra*. In contrast, discounting this claim to present value was not erroneous, because it was based on payments that would not have occurred until the future if not for the claim becoming immediately payable due to the bankruptcy. *See* Part I.A, *supra*. Both of these conclusions – that no part of the claim was for disallowable unmatured interest, but that the entire claim should be discounted to present value – are derived from my analysis of the nature of the financial instrument that gave rise to the claim. *See* Part III, *infra*. But as described in Part V, *infra*, we cannot correct the error which led to double discounting in this case because the claimants failed to appeal the erroneous discount, and only appealed the nonerroneous discount. So, despite the fact that an erroneous double discount was applied to this claim, I would hold that we have no opportunity to correct that error, given the nature of this appeal.

The manifest purpose of the securitization and guarantee process in this case was to convert the original mortgage loans into a substantially different form of financial instrument. The terms of the Pooling and Service Agreements make it clear that rather than loaning funds to the Trusts, the certificate holders were instead purchasing a right to be paid from the trust's assets according to the specified schedules.[27] Indeed, the Agreements described the payments due to the certificate-holders as "Principal Distribution Amounts" and "Interest Distribution Amounts." These terms imply that the Trusts were not making principal and interest payments on loans granted to the Trusts by the certificate holders. Rather, these terms imply that the Trusts were instead distributing payments derived from the Trusts' revenues to the certificate holders. The fact that the Trusts' underlying revenue streams from the mortgages were divisible into principal and interest portions, and the fact that the scheduled distributions to the certificate holders reflected this underlying division, does not imply that the Trusts' payments to the certificate holders were themselves in the nature of principal and interest payments.

Further, once Oakwood Homes guaranteed the payments on the B-2 Certificates, the joint obligation of the

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[27] Notably, the "tranch" system adopted by the Trusts, which set a hierarchical priority system for distributing the available funds among the different classes of certificate holders, demonstrates that the Trusts were not simply holding specific sets of mortgages for the benefit of corresponding sets of certificate holders. Rather, the Trusts were indeed first "pooling" the revenues received from the mortgages, and then distributing funds from this general pool to the different certificate holders according to the schedules and priority system defined in the Pooling and Service Agreements.

Trusts and Oakwood Homes to make the scheduled payments was not conditioned on the Trusts receiving the necessary revenues from the mortgages held by the trust. The Limited Guarantee thus further distinguished the payments due to the B-2 Certificate holders from the underlying interest and principal payments owed to the Trusts. *Cf. In re Wisconsin Engine Co.,* 234 F. 281, 284 (7th Cir.1916) (holding that even though payments on promissory notes were "expressed in terms of royalties," they were not expressed as conditioned upon such royalties being earned, and thus were not royalty payments). In *Wisconsin Engine,* the creditor owned certain patents, and granted licenses for those patents to the debtor. *See id.* at 282-83. The license agreement provided for a royalty, but the license agreement also in effect securitized and guaranteed the royalty payments for the first three years. *Id.* The agreement provided for a minimum royalty payment of $22,500 for the first three years, and further provided that

> as evidence or prepayment of such sum the licensee will deliver to the licensor, at the time of signing this agreement, two sets of negotiable promissory notes of equal amounts for the aggregate sums of twenty-two thousand five hundred dollars ($22,500) . . . payable at the following times and in the following amounts: Five thousand dollars ($5,000) shall be payable at the end of one year from the date hereof; ten thousand dollars ($10,000) at the end of two years from the date hereof; and seven thousand five hundred ($7,500) at the end of three years from the date hereof.

Id. After the licensee entered bankruptcy, the Seventh Circuit allowed a claim on one of the two sets of these

promissory notes (a set of three notes for $2,500, $5,000, and $3,750 respectively), for a total of $10,537.51, their discounted value as of the time bankruptcy proceedings began. *Id.* at 282, 284.

The Seventh Circuit analyzed the relationship between the payments due on the promissory notes and the underlying royalty payments as follows:

> In our judgment, the indebtedness represented by the notes was the consideration for the grant of the exclusive license. It was expressed in terms of royalties, and properly so, because, in so far as royalties up to that amount would be earned under the agreement, payment of the notes would cancel any obligation in respect thereto. But it was not expressed as conditioned upon such royalties being earned. The parties contemplated the possible cancellation of the license before the expiration of three years because of licensee's breach of the agreement or its insolvency. Nevertheless the obligation to pay the $22,000 [sic] remained.
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> . . .
>
> There is no guaranty that, if royalties shall in fact become due, they shall amount to at least $22,500 for the period; there is an absolute undertaking that this amount shall be paid. . . . [T]he provision that notes should be given and that they should be negotiable is additional evidence tending to resolve any doubt as to the intention of the parties that the amount therein stated was to be payable in any event. That the notes were not in fact sold is of no moment. The parties necessarily contemplated that they might be negotiated.

Id. at 284. In short, the Seventh Circuit recognized that although the payment obligations were "expressed in terms of royalties," once those obligations had been converted into guaranteed and negotiable financial instruments, they should be treated as such by the Bankruptcy Code.

This same principle should apply in our case. Although payments distributed by the Trusts are "expressed in terms" of "Principal Distribution Amounts" and "Interest Distribution Amounts," in reality the B-2 Certificate holders were like the holders of the negotiable promissory notes in *In re Wisconsin Engine:* they were guaranteed a future set of payments, and the payments owed to the B-2 Certificate holders were not conditioned on the Trusts acquiring the revenue from the underlying mortgages and then distributing it to the certificate holders. Indeed, creating such a financial instrument was the manifest purpose of the securitization and guarantee process with respect to the B-2 Certificates.

In short, the B-2 Certificate holders' claims against Oakwood Homes were not for principal and interest due to them on a loan that they had made to Oakwood Homes. Indeed, these claims were not even for guarantees on a loan that the certificate holders had made to a third party, because the certificate holders did not in fact loan money to the Trusts. Rather, the certificate holders had a claim against Oakwood Homes that was equivalent to any other non-interest-bearing future obligation, even though a

portion of this obligation was expressed as a guarantee of payment for an "Interest Distribution Amount."[28]

IV.

Consequently, the Bankruptcy Court's error was not in discounting Oakwood Home's future guarantees of payment for the Principal Distribution Amounts to present value in accordance with the general instruction in § 502(b). Rather, the Bankruptcy Court's error was in applying the rule in § 502(b)(2) to this case and disallowing the B-2 Certificate holders' claims to the extent that they were for Oakwood Home's guarantees of payment on the Interest Distribution Amounts. That is because this portion of the B-2 Certificate holders' claims was not in fact for unmatured interest within the meaning of § 502(b)(2).

In light of the multiple operations embedded in the rule in § 502(b)(2), the consequences of this error were not inconsequential. Because the B-2 Certificate holders were not directly entitled to payments from some specific set of mortgages, they had not bargained for a risk premium in the form of higher mortgage interest rates. Indeed, the tranch system established by the Pooling and Service Agreements effectively transferred some of the risk associated with the

[28] In that sense, it should not be relevant that the securities in this case were partially backed by the revenue from the mortgages held by the Trusts, rather than the revenue from any other sort of asset that a trust could hold. As demonstrated by *Wisconsin Engine*, the securitization and guarantee process in this case could be applied to many different types of assets, and the application of the Bankruptcy Code to a guarantor's obligations in such cases should not depend on the nature of the underlying assets held by the Trusts.

possible nonpayment of the mortgages from the higher priority certificates to the lowest priority certificates – most notably to the B-2 Certificates – without any compensating increase in the Interest Distribution Amounts due to the B-2 Certificate holders.

The limited guarantee of payment supplied by Oakwood Homes to the B-2 Certificate holders was specifically intended to facilitate the sale of the B-2 Certificates by eliminating this concentrated risk. And because Oakwood Home's guarantee of the B-2 Certificate's scheduled payments was not in the form of a loan, nor even in the form of a guarantee on a loan, nowhere in this transaction did the B-2 Certificate holders bargain for any interest rate premium associated with the risk that Oakwood Homes itself would fail to make the payments required by the terms of the Limited Guarantee.[29]

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[29] In cases where a lender bargains for interest payments on a guaranteed loan, it may be reasonable to assume that the lender has bargained for an interest rate premium associated with the combined risk of the borrower and the guarantor jointly failing to make payments on the loan as per their agreements. Accordingly, if in such a case the borrower fails to make their payments and the guarantor petitions for bankruptcy, it may be economically justifiable to treat the guarantor's future obligations to the lender as if they were interest-bearing loan obligations within the meaning of § 502(b)(2). *See* Maj. Op. at 12 (concluding that Oakwood Homes, as the putative guarantor on a loan, should be treated as being in the "exact same position as the Trusts, the primary obligors, with respect to the obligation to make these principal and interest payments"). In other words, in such a case the lender presumably has again made a "bet" -- namely that either the borrower or the guarantor would make the payments as per their agreements – and the lender also presumably bargained for compensation for the possibility of losing this bet in the form of the possibility of realizing an interest rate premium in the event that the lender won this bet.

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When the Bankruptcy Court erroneously applied § 502(b)(2) to disallow the claims to the extent that they were for Oakwood Home's guarantees of payment on the Interest Distribution Amounts, it effectively performed not just a discounting operation, but also an operation to eliminate a hypothetical interest rate premium. But because the B-2 Certificate holders had not in fact bargained for and received such an interest rate premium, applying the rule in § 502(b)(2) to their claims unjustifiably reduced the allowed amount of their claims to the extent that it went beyond discounting their claims to present value.

We need not reach this issue today, however, because the B-2 Certificates were not in fact loans to the Trusts, and thus Oakwood Homes' guarantees of payment on the B-2 Certificates were not guarantees on loans, and the B-2 Certificate holders were not lenders who had bargained for an interest rate premium on a loan which would reflect in part the risk of Oakwood Homes' nonpayment on its guarantee. Indeed, these findings are confirmed by the simple fact that parties described by the majority as the "primary obligors" – the Trusts – will not in fact become insolvent as a result of the stipulated revenue shortfalls, and the B-2 Certificate holders will not have a claim against the Trusts for a default on their obligations under the Pooling and Service Agreements. Rather, the possibility of such a shortfall in revenues was expressly contemplated and provided for in the Pooling and Service Agreements, and the B-2 Certificate holders knowingly purchased low-priority certificates. Similarly, the B-2 Certificate holders will have no claim for direct payment from the purchasers who default on their mortgages, because they did not bargain for and receive the right to such direct payments. Accordingly, this is not a case in which a lender has a claim against both a borrower and guarantor who have failed to make payments, because the B-2 Certificate holders will have no such claim against either the Trusts or the underlying purchasers as a result of the stipulated shortfalls. Again, these facts simply confirm that due to the securitization process, the B-2 Certificate holders were not lenders, and Oakwood Homes did not provide the B-2 Certificate holders with a guarantee on a loan.

In other words, by erroneously applying § 502(b)(2) to this case, the Bankruptcy Court and the District Court treated the B-2 Certificate holders as having made a losing bet on Oakwood Homes making its payments as per the guarantee agreement. But because the B-2 Certificate holders had not bargained for an interest rate premium associated with that risk, they could not have won any such hypothetical bet in the event that Oakwood Homes fulfilled its agreement. Accordingly, this error by the Bankruptcy Court and the District Court had the effect of imposing on the B-2 Certificate holders the consequences of losing a bet, a bet that they did not in fact agree to make.[30]

V.

Due to the procedural posture of this case, however, it is not possible for us to remand the case to the District Court with an instruction to reverse the Bankruptcy Court's judgment to the extent that the Bankruptcy Court disallowed claims based on Oakwood Home's guarantees of payment on the Interest Distribution Amounts. That is because JP Morgan chose not to raise this portion of the Bankruptcy Court's judgment as an issue in this appeal,

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[30] The majority suggests that these considerations are "irrelevant" because the "interest rate premium reduction was not appealed by JP Morgan." Maj. Op. at 22 n.15. I agree that we cannot correct this error because JP Morgan failed to appeal this decision by the Bankruptcy Court and the District Court. *See* Part V, *infra*. Nonetheless, these considerations *are* relevant because they demonstrate the differences between the error which in fact occurred in this case (the unwarranted application of § 502(b)(2) to the claims) and the nonerroneous decision which the majority seeks to correct (the discounting of the claims to present value). In other words, these two possible errors are not interchangeable, and we should not treat them as such on appeal.

and instead appealed only the Bankruptcy Court's subsequent decision to discount the remainder of the B-2 Certificate holders' claims to present value.

Of course, in light of the traditional construction of § 502(b) and § 502(b)(2), U.S. Bank inconsistently argued below: (1) that the claims in this case should be treated as interest-bearing obligations for the purpose of disallowing what the parties have described as the interest portion of the claims pursuant to § 502(b)(2); and (2) that the claims should not be treated as interest-bearing obligations for the purpose of accelerating what the parties have described as the principal portion of the claims. Nonetheless, as a result of their errors, neither the Bankruptcy Court nor the District Court compelled U.S. Bank to choose between these inconsistent theories of the disputed claims. Accordingly, U.S. Bank remained free to argue on the basis of either theory of the disputed claims during this appeal.

Before us, U.S. Bank correctly argued that the future obligations in this case were not in the nature of loan payments and therefore should be discounted to present value. Accordingly, I would hold that we are bound to affirm the District Court's judgment on this appeal. That is because the Bankruptcy Court did not err with respect to the sole issue presented on appeal, and JP Morgan chose not to appeal the issue with respect to which the Bankruptcy Court did in fact err.[31]

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[31] The majority expresses "confusion" about this conclusion, observing that "the courts below determined that legally, it was permissible to discount a claim to present value *after* applying § 502(b)(2) to disallow any post-petition interest." Maj. Op. at 12 n.5. I agree that the Bankruptcy Court and the District Court erred by concluding that double discounting was permissible under § 502(b)(2)

(Continued on following page)

VI.

In sum, to the extent that the majority's reasoning implies that discounting non-interest-bearing future obligations to present value is contrary to the text of the Bankruptcy Code, I believe that it unnecessarily and unjustifiably undermines the traditional construction of § 502(b). Further, in my view the majority has repeated the error of the Bankruptcy Court and the District Court by accepting JP Morgan's position on appeal that Oakwood Homes' guarantees of payment to the B-2 Certificate holders should be treated as if they were principal and interest payments. In a world of increasingly complex

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and § 502(b). *See* Note 7, *supra*. Nonetheless, the mere fact that the Bankruptcy Court and the District Court erred in their legal reasoning does not mean that we should reverse the result. *See Helvering v. Gowran*, 302 U.S. 238, 245 (1937) ("In the review of judicial proceedings the rule is settled that, if the decision below is correct, it must be affirmed, although the lower court relied upon a wrong ground or gave a wrong reason."); *Brumfield v. Sanders*, 232 F.3d 376, 379 n.2 (3d Cir.2000) ("'An appellate court may affirm a result reached by the District Court on different reasons, as long as the record supports the judgement.'") (citation omitted). Here, the record supports a determination that the claims in question were not for principal and interest within the meaning of § 502(b)(2), and therefore that the claims were properly discounted to present value. *See* Part III, *supra*. Accordingly, the fact that the Bankruptcy Court and District Court reached the same conclusion after first determining that the claims in question *were* for principal and interest within the meaning of § 502(b)(2) merely means that they reached the right conclusion after engaging in erroneous reasoning. In contrast, their other conclusion – that the claims should be disallowed to the extent that they were for the guarantees of the Interest Distribution Amounts – was not supported by the record, and I would not have affirmed that decision on appeal. *See* Part IV, *supra*. But that decision has not been appealed, and therefore we are left considering only a conclusion that is supported by the record, albeit not by the erroneous reasoning of the Bankruptcy Court and the District Court.

financial instruments, it is vital for the courts to recognize that a series of agreements can transform what was originally a loan into a very different financial vehicle – and indeed that effecting such a transformation can be one of the very purposes of such agreements. The courts in turn should apply the Bankruptcy Code, including § 502(b) and § 502(b)(2), in light of the actual economic bargains defined by such financial instruments. Only then can the courts carry out one of the core purposes of the Bankruptcy Code – to reliably and fairly distribute the bankrupt's assets among its creditors.

For the reasons stated above, I respectfully dissent.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	: Chapter 11
OAKWOOD HOMES CORP. et al.,	: Bankruptcy No. 02-13396 PJW
Debtors.	: Civil Action No. 04-835 JJF
JPMORGAN CHASE BANK, Trustee,	: (Filed Feb. 17, 2005)
Appellant,	:
v.	:
U.S. BANK NATIONAL ASSOCIATION,	:
Appellee.	:

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MEMORANDUM OPINION

February 17, 2005
Wilmington, Delaware

/s/ Joseph J. Farnan J.
Farnan, District Judge.

Presently before the Court is an appeal by JPMorgan Chase Bank, in its capacity as successor trustee on behalf of some of the holders of certain Class B-2 Certificates, from the May 6, 2004, orders (Claims Orders) of the United States Bankruptcy Court for the District of Delaware ("Bankruptcy Court"). The Claims Orders granted, in part, and denied, in part, the objections of Appellee U.S. Bank National Association, as Trustee, to the proofs of claim filed by JPMorgan. For the reasons set forth below, the decision of the Bankruptcy Court will be affirmed.

I. Background

Debtor Oakwood Homes Corporation ("Oakwood") designs, builds, and sells manufactured modular homes. To raise capital for its financing activities, Oakwood formed non-debtor Real Estate Mortgage Investment Conduits trusts ("REMIC Trusts") to issue Class B-2 Certificates. Such certificates entitled their holders ("B-2

Holders") to periodic payments of principal and interest over a period of time. Oakwood guaranteed any shortfalls in the REMIC Trusts' payment on the B-2 Certificates.

On November 15, 2003 [sic], Oakwood filed for chapter 11 bankruptcy. Appellant JPMorgan Chase Bank ("JPMorgan"), as successor trustee on behalf of some of the holders of the B-2 Holders, filed proofs of claim seeking payment of past and future shortfalls of principal and interest on the B-2 Certificates (the "Limited Guarantee Claims"). On October 10, 2003, and November 21, 2003, Appellee U.S. Bank National Association ("U.S. Bank"), as successor indenture trustee for holders of certain senior notes issued by Oakwood, filed objections to the Limited Guarantee Claims.

On May 6, 2004, the Bankruptcy Court entered orders ("the Claims Orders) granting, in part, and denying, in part, U.S. Bank's objections to the JPMorgan's Limited Guarantee Claims. (D.I. 20, Ex. A.) In relevant part, the Bankruptcy Court held that (1) "the Limited Guarantee Claims are disallowed pursuant to Section 502(b)(2) of the Bankruptcy Code to the extent they include amounts for interest shortfalls accruing after the petition date" and (2) "Section 502(b) of the Bankruptcy Code requires the discounting of the Limited Guarantee Claims to present value as of the petition date, notwithstanding the disallowance of the interest shortfalls accruing after the petition date." *(Id.,* at 3, 4.) JPMorgan appeals from the Claims Orders of the Bankruptcy Court.

II. Parties' Contentions

JPMorgan contends that the Bankruptcy Court erred in its interpretation of section 502(b). Specifically, JPMorgan

contends that, presuming 502(b)(2) excludes post-petition interest, 502(b) does not require that the interest-bearing principal of an unmatured claim be discounted to the present value as of the petition date. JPMorgan contends that to construe 502(b) to exclude both would be "double-discounting," which is "unlawful, inequitable, and commercially nonsensical," as well as contrary to a plain reading of the statute (D.I. 19 at 2, 16-17). In the alternative, JPMorgan contends that claim amount should include post-petition interest. JPMorgan argues that section 502(b)(2) is inapplicable because the Limited Guarantee Claims do not seek payment of interest on any debt of debtor Oakwood (D.I. 33).

In response, U.S. Bank contends that (1) the Bankruptcy Court accurately construed 502(b) and (2) any perceived hardship to the Class B-2 Certificate holders is a function of the B-2 Certificates, not the Bankruptcy Code.

III. Standard of Review

The Court has jurisdiction to hear an appeal from the Bankruptcy Court pursuant to 28 U.S.C. § 158(a). In undertaking a review of the issues on appeal, the Court applies a clearly erroneous standard to the Bankruptcy Court's findings of fact and a plenary standard to its legal conclusions. *See Am. Flint Glass Workers Union v. Anchor Resolution Corp.*, 197 F.3d 76, 80 (3d Cir. 1999). With mixed questions of law and fact, the Court must accept the Bankruptcy Court's finding of "historical or narrative facts unless clearly erroneous, but exercise[s] 'plenary review of the trial court's choice and interpretation of legal precepts and its application of those precepts to the historical facts.'" *Mellon Bank, N.A. v. Metro Communications, Inc.*,

945 F.2d 635, 642 (3d Cir. 1991) (citing *Universal Mineral, Inc. v. C.A. Hughes & Co.*, 669 F.2d 98, 101-02 (3d Cir. 1981)). The appellate responsibilities of the Court are further understood by the jurisdiction exercised by the Third Circuit, which "conducts the same review of the Bankruptcy Court's order as . . . the District Court." *In re Telegroup*, 281 F.3d 133, 136 (3d Cir. 2002) (citing *In re O'Brien Envtl. Energy, Inc.*, 188 F.3d 116, 122 (3d Cir. 1999)).

IV. Discussion

Sections 502(b) and 502(b)(2) of the Bankruptcy Code state:

> (b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount except to the extent that – . . . (2) such claim is for unmatured interest . . .

"Interpretation of a statute must begin with the statute's language." *Mallard v. United States Dist. Court*, 490 U.S. 296, 300 (1989). "[W]here . . . the statute's language is plain, 'the sole function of the courts is to enforce it according to its terms.'" *United States v. Ron Pair Enters.*, 489 U.S. 235, 241 (1989) (quoting *Caminetti v. United States*, 242 U.S. 470, 485 (1917)).

In this appeal, the Court concludes that a plain reading of section 502(b) supports the Bankruptcy Court's decision. According to the language of the statute, section

502(b) requires that the Court both (1) "determine the amount of [the] claim . . . as of the date of the filing of the petition" and (2) exclude from the claim amount "unmatured interest." The Court concludes that section 502(b)'s language clearly and unambiguously required the Bankruptcy Court to both discount the instant claims to present value and exclude post-petition interest.

The Court further concludes that such a decision is not at odds with the overarching purposes of the Bankruptcy Code. The instruments in question, the B-2 Certificates, are certificates for future payments, not loans to the REMIC Trusts or the Debtor. The parties stipulated that no claim for any principal payment under the applicable B-2 Certificates arises before April 15, 2011. (D.I. 3 at Tab 18.) Because payment is not due until the future, the Bankruptcy Court discounted the claims to present value. Such discounting is based on the premise that money received today is more valuable than money received tomorrow. *See Matter of Penn Central Transp. Co.*, 596 F.2d 1102, 1116 (3d Cir. 1979). To determine the present value, the parties stipulated to the amount of principal shortfalls arising under the B-2 Certificates over time and the present value of the future principal shortfalls, discounted at a 7.74% rate, as of the petition date. (D.I. 3 at Tab 21 ¶ 2.) In effect, the parties stipulated that the REMIC Trusts are not liable for the full principal upon filing, and thus the full principal is not accelerated. Accordingly, the Court concludes that Oakwood, the guarantor of the REMIC Trusts, cannot be held liable for the full principal upon filing.

Finally, while the Bankruptcy Court did not articulate its rationale for its decision, the Court concludes that the previous decision of the Bankruptcy Court in *In re Loewen*

Group Int'l, Inc., 274 B.R. 427 (Bankr. D. Del. 2002) is persuasive. In accordance with what the Court considered the clear, unambiguous language of 502(b), it ordered in *Loewen* that the claims in dispute exclude post-petition interest and be discounted to present value. JPMorgan contends that *Loewen* is distinguishable because its claims were for non-interest-bearing principal. In *Loewen,* however, some of the claims "include[d] amounts for post-petition interest, late fees, attorneys' fees and other charges." *Id.* at 429-30. Further, the Court is not persuaded that the distinction between interest-bearing claims and non-interest-bearing claims is significant to the issue at bar.

V. Conclusion

For the reasons discussed, the Court will affirm the Bankruptcy Court's Claims Orders. An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	:	Chapter 11
OAKWOOD HOMES CORP. et al.,	:	Bankruptcy No. 02-13396 PJW
Debtors.	:	Civil Action No. 04-835 JJF
JPMORGAN CHASE BANK, Trustee,	:	
Appellant,	:	
v.	:	
U.S. BANK NATIONAL ASSOCIATION,	:	
Appellee.	:	

ORDER

(Filed Feb. 17, 2005)

At Wilmington, this 17 day of February 2005, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED THAT the May 6, 2004, orders of the Bankruptcy Court granting, in part, and denying, in part, the objections of Appellee U.S. Bank National Association to the proofs of claim filed by JPMorgan are **AFFIRMED**.

February 17, 2005
DATE

/s/ Joseph J. Farnan J.
UNITED STATES
DISTRICT JUDGE

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

In re	:	Chapter 11
OAKWOOD HOMES CORPORATION et al.,	:	Case No. 02-13396 (PJW)
Debtors.	:	Jointly Administered
	:	RE: Docket No. 4025

ORDER GRANTING, IN PART, AND DENYING, IN PART, THE OBJECTIONS OF U.S. BANK NATIONAL ASSOCIATION, AS INDENTURE TRUSTEE, TO AMENDED PROOF OF CLAIM NO. 8022 FILED BY JPMORGAN CHASE BANK, AS TRUSTEE, FOR OMI TRUST 1997-B

(Filed May 6, 2004)

Upon the Objection of U.S. Bank National Association, in its capacity as indenture trustee ("U.S. Bank"), to the Claims of JPMorgan Chase Bank, as Trustee for Holders of the B-2 Certificate Guaranty Claims and Motion for Estimation of Such Claim Pursuant to Section 502(c) of the Bankruptcy Code, dated October 10, 2003 (the "Initial Objection"); and upon the Response of JPMorgan Chase Bank, in its capacity as trustee ("JPMorgan"), to U.S. Bank National Association's Objection to the Allowance of the Class B-2 Certificate REMIC Guarantee Claims and Motion to Estimate the Contingent Portion of the Claims, dated November 6, 2003, including the accompanying affidavits (with exhibits) of James R. Lewis and John J. Galban, sworn to November 3 and 4, 2003, respectively (the "Initial Response"); and upon the Supplemental

Objection of U.S. Bank National Association, in its Capacity as Indenture Trustee, to the REMIC Claims of JPMorgan Chase Bank, as Trustee for Holders of the B-2 Certificate Guarantee Claims, dated November 21, 2003 (the "Supplemental Objection," together with the Initial Objection, the "Objections"); and upon the Response of JPMorgan Chase Bank, in its Capacity as Trustee, to U.S. Bank National Association's Supplemental Objection to the Class B-2 Certificate REMIC Guarantee Claims, dated January 16, 2004, including the accompanying affidavits (with exhibits) of James R. Lewis and John J. Galban, sworn to January 14 and 15, 2004, respectively (the "Supplemental Response," together with the Initial Response, the "Responses"); and upon the Oakwood Homes Corporation Discount Rate Report of Houlihan Lokey Howard & Zukin, dated February 2004; and upon the Expert Report of Bradford Cornell of Charles River Associates, dated February 10, 2004, and all parties in interest having received good and sufficient notice of the Objections and the Responses; and hearings having been held on the Objections on November 13, 2003, November 26, 2003, January 23, 2004 and March 12, 2004; and after due deliberation and sufficient cause appearing therefore:

IT IS HEREBY FOUND THAT:

(A) The Court has jurisdiction to consider the Objections and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334.

(B) This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

(C) Debtor Oakwood Homes Corporation ("OHC") and its affiliates design, manufacture, market and distribute modular homes. In addition, OHC, through its subsidiary

Oakwood Acceptance Corporation, finances the majority of its retail sales through retail installment contracts or mortgages ("RICs").

(D) OHC funds its financing activities primarily by securitizing the RICs using Real Estate Mortgage Investment Conduits ("REMIC") involving the sale to institutional investors of trust certificates. Non-debtor REMIC trusts issue the certificates, which evidence beneficial ownership interests in the assets of the trusts, including the RICs transferred to the trusts by OHC's affiliate. The holders of the REMIC trust certificates are entitled to payment by the REMIC trusts of principal and interest from monthly collections on the RICs.

(E) As part of the securitization transactions, OHC issued guarantees of any shortfalls in the payment of principal and interest due on the Class B-2 Certificates (the "Limited Guarantees"). Several REMIC trusts, including OMI Trust 1997-B, issued Class B-2 Certificates covered by the Limited Guarantees.

(F) JPMorgan, in its capacity as successor trustee for OMI Trust 1997-B, filed an Amended Proof of Claim (No. 8022) on behalf of the holders of the Class B-2 Certificates issued by OMI Trust 1997-B for the amount of principal and interest shortfalls due or projected to become due under the Limited Guarantees (the "Limited Guarantee Claims").

(G) In the Objections, U.S. Bank seeks, *inter alia*, an order disallowing the Limited Guarantee Claims to the extent that (a) they include amounts for interest shortfalls accruing after the petition date (November 15, 2002), (b) they include the increase in OHC's guarantee liabilities resulting from the so-called Flip-Up Motion (as defined in

the Objections and the Responses) and (c) they are not discounted to present value as of the petition date at the rate of 20%.

NOW, THEREFORE IT IS HEREBY ORDERED THAT:

1. For the reasons stated on the record at the November 26, 2003 hearing, the Limited Guarantee Claims are disallowed pursuant to Section 502(b)(2) of the Bankruptcy Code to the extent they include amounts for interest shortfalls accruing after the petition date.

2. For the reasons stated on the record at the January 23, 2004 hearing, the Limited Guarantee Claims are allowed to the extent they include the increase in OHC's guarantee liabilities resulting from the Flip-Up Motion.

3. For the reasons stated on the record at the January 23, 2004 hearing, Section 502(b) of the Bankruptcy Code requires the discounting of the Limited Guarantee Claims to present value as of the petition date, notwithstanding the disallowance of the interest shortfalls accruing after the petition date.

4. For the reasons stated on the record at the January 23, 2004 hearing, the proper rate to apply to discount the Limited Guarantee Claims to present value as of the petition date is the prudent investor rate.

5. For the reasons stated on the record at the March 12, 2004 hearing, the Court adopts the prudent investor rate of 7.74% proposed by JPMorgan's expert, Bradford Cornell of Charles River Associates, as the proper discount rate.

6. As stipulated by the parties, the Limited Guarantee Claims are allowed unsecured claims for interest shortfalls accruing prior to the petition date in the amount of $37,723.81.

7. As stipulated by the parties, and subject to each party's right to appeal from any of the above-referenced rulings, the Limited Guarantee Claims are allowed unsecured claims for principal shortfalls in the amount of $7,415,899, which after discounting to present value at the rate of 7.74% is $2,907,962.

8. This Court retains jurisdiction to interpret, implement and enforce the provisions of this order.

Dated: May 5, 2004
Wilmington, Delaware

/s/ Peter J. Walsh
THE HONORABLE
PETER J. WALSH
UNITED STATES
BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

In re	:	Chapter 11
OAKWOOD HOMES CORPORATION et al.,	:	Case No. 02-13396 (PJW)
Debtors.	:	Jointly Administered
	:	RE: Docket No. 4025

ORDER GRANTING, IN PART, AND DENYING, IN PART, THE OBJECTIONS OF U.S. BANK NATIONAL ASSOCIATION, AS INDENTURE TRUSTEE, TO AMENDED PROOF OF CLAIM NO. 8019 FILED BY JPMORGAN CHASE BANK, AS TRUSTEE, FOR OMI TRUST 1998-B

(Filed May 6, 2004)

Upon the Objection of U.S. Bank National Association, in its capacity as indenture trustee ("U.S. Bank"), to the Claims of JPMorgan Chase Bank, as Trustee for Holders of the B-2 Certificate Guaranty Claims and Motion for Estimation of Such Claim Pursuant to Section 502(c) of the Bankruptcy Code, dated October 10, 2003 (the "Initial Objection"); and upon the Response of JPMorgan Chase Bank, in its capacity as trustee ("JPMorgan"), to U.S. Bank National Association's Objection to the Allowance of the Class B-2 Certificate REMIC Guarantee Claims and Motion to Estimate the Contingent Portion of the Claims, dated November 6, 2003, including the accompanying affidavits (with exhibits) of James R. Lewis and John J. Galban, sworn to November 3 and 4, 2003, respectively (the "Initial Response"); and upon the Supplemental

Objection of U.S. Bank National Association, in its Capacity as Indenture Trustee, to the REMIC Claims of JPMorgan Chase Bank, as Trustee for Holders of the B-2 Certificate Guarantee Claims; dated November 21, 2003 (the "Supplemental Objection," together with the Initial Objection, the "Objections"); and upon the Response of JPMorgan Chase Bank, in its Capacity as trustee, to U.S. Bank National Association's Supplemental Objection to the Class B-2 Certificate REMIC Guarantee Claims, dated January 16, 2004, including the accompanying affidavits (with exhibits) of James R. Lewis and John J. Galban, sworn to January 14 and 15, 2004, respectively (the "Supplemental Response," together with the Initial Response, the "Responses"); and upon the Oakwood Homes Corporation Discount Rate Report of Houlihan Lokey Howard & Zukin, dated February 2004; and upon the Expert Report of Bradford Cornell of Charles River Associates, dated February 10, 2004, and all parties in interest having received good and sufficient notice of the Objections and the Responses; and hearings having been held on the Objections on November 13, 2003, November 26, 2003, January 23, 2004 and March 12, 2004; and after due deliberation and sufficient cause appearing therefore:

IT IS HEREBY FOUND THAT:

(A) The Court has jurisdiction to consider the Objections and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334.

(B) This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

(C) Debtor Oakwood Homes Corporation ("OHC") and its affiliates design, manufacture, market and distribute modular homes. In addition, OHC, through its subsidiary

Oakwood Acceptance Corporation, finances the majority of its retail sales through retail installment contracts or mortgages ("RICs").

(D) OHC funds its financing activities primarily by securitizing the RICs using Real Estate Mortgage Investment Conduits ("REMIC") involving the sale to institutional investors of trust certificates. Non-debtor REMIC trusts issue the certificates, which evidence beneficial ownership interests in the assets of the trusts, including the RICs transferred to the trusts by OHC's affiliate. The holders of the REMIC trust certificates are entitled to payment by the REMIC trusts of principal and interest from monthly collections on the RICs.

(E) As part of the securitization transactions, OHC issued guarantees of any shortfalls in the payment of principal and interest due on the Class B-2 Certificates (the "Limited Guarantees"). Several REMIC trusts, including OMI Trust 1998-B, issued Class B-2 Certificates covered by the Limited Guarantees.

(F) JPMorgan, in its capacity as successor trustee for OMI Trust 1998-B, filed an Amended Proof of Claim (No. 8019) on behalf of the holders of the Class B-2 Certificates issued by OMI Trust 1998-B for the amount of principal and interest shortfalls due or projected to become due under the Limited Guarantees (the "Limited Guarantee Claims").

(G) In the Objections, U.S. Bank seeks, *inter alia*, an order disallowing the Limited Guarantee Claims to the extent that (a) they include amounts for interest shortfalls accruing after the petition date (November 15, 2002), (b) they include the increase in OHC's guarantee liabilities resulting from the so-called Flip-Up Motion (as defined in

the Objections and the Responses) and (c) they are not discounted to present value as of the petition date at the rate of 20%.

NOW, THEREFORE IT IS HEREBY ORDERED THAT:

1. For the reasons stated on the record at the November 26, 2003 hearing, the Limited Guarantee Claims are disallowed pursuant to Section 502(b)(2) of the Bankruptcy Code to the extent they include amounts for interest shortfalls accruing after the petition date.

2. For the reasons stated on the record at the January 23, 2004 hearing, the Limited Guarantee Claims are allowed to the extent they include the increase in OHC's guarantee liabilities resulting from the Flip-Up Motion.

3. For the reasons stated on the record at the January 23, 2004 hearing, Section 502(b) of the Bankruptcy Code requires the discounting of the Limited Guarantee Claims to present value as of the petition date, notwithstanding the disallowance of the interest shortfalls accruing after the petition date.

4. For the reasons stated on the record at the January 23, 2004 hearing, the proper rate to apply to discount the Limited Guarantee Claims to present value as of the petition date is the prudent investor rate.

5. For the reasons stated on the record at the March 12, 2004 hearing, the Court adopts the prudent investor rate of 7.74% proposed by JPMorgan's expert, Bradford Cornell of Charles River Associates, as the proper discount rate.

6. As stipulated by the parties, the Limited Guarantee Claims are allowed unsecured claims for interest shortfalls accruing prior to the petition date in the amount of $86,082.50.

7. As stipulated by the parties, and subject to each party's right to appeal from any of the above-referenced rulings, the Limited Guarantee Claims are allowed unsecured claims for principal shortfalls in the amount of $15,000,000, which after discounting to present value at the rate of 7.74% is $3,998,597.

8. This Court retains jurisdiction to interpret, implement and enforce the provisions of this order.

Dated: May 5, 2004
Wilmington, Delaware

/s/ Peter J. Walsh
THE HONORABLE
PETER J. WALSH
UNITED STATES
BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

In re	:	Chapter 11
OAKWOOD HOMES CORPORATION et al.,	:	Case No. 02-13396 (PJW)
Debtors.	:	Jointly Administered
	:	RE: Docket No. 4025

ORDER GRANTING, IN PART, AND DENYING, IN PART, THE OBJECTIONS OF U.S. BANK NATIONAL ASSOCIATION, AS INDENTURE TRUSTEE, TO AMENDED PROOF OF CLAIM NO. 8020 FILED BY JPMORGAN CHASE BANK, AS TRUSTEE, FOR OMI TRUST 1997-D

(Filed May 6, 2004)

Upon the Objection of U.S. Bank National Association, in its capacity as indenture trustee ("U.S. Bank"), to the Claims of JPMorgan Chase Bank, as Trustee for Holders of the B-2 Certificate Guaranty Claims and Motion for Estimation of Such Claim Pursuant to Section 502(c) of the Bankruptcy Code, dated October 10, 2003 (the "Initial Objection"); and upon the Response of JPMorgan Chase Bank, in its capacity as trustee ("JPMorgan"), to U.S. Bank National Association's Objection to the Allowance of the Class B-2 Certificate REMIC Guarantee Claims and Motion to Estimate the Contingent Portion of the Claims, dated November 6, 2003, including the accompanying affidavits (with exhibits) of James R. Lewis and John J. Galban, sworn to November 3 and 4, 2003, respectively (the "Initial Response"); and upon the Supplemental

Objection of U.S. Bank National Association, in its Capacity as Indenture Trustee, to the REMIC Claims of JPMorgan Chase Bank, as Trustee for Holders of the B-2 Certificate Guarantee Claims, dated November 21, 2003 (the "Supplemental Objection," together with the Initial Objection, the "Objections"); and upon the Response of JPMorgan Chase Bank, in its Capacity as Trustee, to U.S. Bank National Association's Supplemental Objection to the Class B-2 Certificate REMIC Guarantee Claims, dated January 16, 2004, including the accompanying affidavits (with exhibits) of James R. Lewis and John J. Galban, sworn to January 14 and 15, 2004, respectively (the "Supplemental Response," together with the Initial Response, the "Responses"); and upon the Oakwood Homes Corporation Discount Rate Report of Houlihan Lokey Howard & Zukin, dated February 2004; and upon the Expert Report of Bradford Cornell of Charles River Associates, dated February 10, 2004, and all parties in interest having received good and sufficient notice of the Objections and the Responses; and hearings having been held on the Objections on November 13, 2003, November 26, 2003, January 23, 2004 and March 12, 2004; and after due deliberation and sufficient cause appearing therefore:

IT IS HEREBY FOUND THAT:

(A) The Court has jurisdiction to consider the Objections and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334.

(B) This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

(C) Debtor Oakwood Homes Corporation ("OHC") and its affiliates design, manufacture, market and distribute modular homes. In addition, OHC, through its subsidiary

Oakwood Acceptance Corporation, finances the majority of its retail sales through retail installment contracts or mortgages ("RICs.").

(D) OHC funds its financing activities primarily by securitizing the RICs using Real Estate Mortgage Investment Conduits ("REMIC") involving the sale to institutional investors of trust certificates. Non-debtor REMIC trusts issue the certificates, which evidence beneficial ownership interests in the assets of the trusts, including the RICs transferred to the trusts by OHC's affiliate. The holders of the REMIC trust certificates are entitled to payment by the REMIC trusts of principal and interest from monthly collections on the RICs.

(E) As part of the securitization transactions, OHC issued guarantees of any shortfalls in the payment of principal and interest due on the Class B-2 Certificates (the "Limited Guarantees"). Several REMIC trusts, including OMI Trust 1997-D, issued Class B-2 Certificates covered by the Limited Guarantees.

(F) JPMorgan, in its capacity as successor trustee for OMI Trust 1997-D, filed an Amended Proof of Claim (No. 8020) on behalf of the holders of the Class B-2 Certificates issued by OMI Trust 1997-D for the amount of principal and interest shortfalls due or projected to become due under the Limited Guarantees (the "Limited Guarantee Claims").

(G) In the Objections, U.S. Bank seeks, *inter alia*, an order disallowing the Limited Guarantee Claims to the extent that (a) they include amounts for interest shortfalls accruing after the petition date (November 15, 2002), (b) they include the increase in OHC's guarantee liabilities resulting from the so-called Flip-Up Motion (as defined in

the Objections and the Responses) and (c) they are not discounted to present value as of the petition date at the rate of 20%.

NOW, THEREFORE IT IS HEREBY ORDERED THAT:

1. For the reasons stated on the record at the November 26, 2003 hearing, the Limited Guarantee Claims are disallowed pursuant to Section 502(b)(2) of the Bankruptcy Code to the extent they include amounts for interest shortfalls accruing after the petition date.

2. For the reasons stated on the record at the January 23, 2004 hearing, the Limited Guarantee Claims are allowed to the extent they include the increase in OHC's guarantee liabilities resulting from the Flip-Up Motion.

3. For the reasons stated on the record at the January 23, 2004 hearing, Section 502(b) of the Bankruptcy Code requires the discounting of the Limited Guarantee Claims to present value as of the petition date, notwithstanding the disallowance of the interest shortfalls accruing after the petition date.

4. For the reasons stated on the record at the January 23, 2004 hearing, the proper rate to apply to discount the Limited Guarantee Claims to present value as of the petition date is the prudent investor rate.

5. For the reasons stated on the record at the March 12, 2004 hearing, the Court adopts the prudent investor rate of 7.74% proposed by JPMorgan's expert, Bradford Cornell of Charles River Associates, as the proper discount rate.

6. As stipulated by the parties, the Limited Guarantee Claims are allowed unsecured claims for interest shortfalls accruing prior to the petition date in the amount of $57,882.55.

7. As stipulated by the parties, and subject to each party's right to appeal from any of the above-referenced rulings, the Limited Guarantee Claims are allowed unsecured claims for principal shortfalls in the amount of $10,096,367, which after discounting to present value at the rate of 7.74% is $2,364,558.

8. This Court retains jurisdiction to interpret, implement and enforce the provisions of this order.

Dated: May 5, 2004
Wilmington, Delaware

/s/ Peter J. Walsh
THE HONORABLE
PETER J. WALSH
UNITED STATES
BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	Chapter 11
OAKWOOD HOMES CORPORATION et al.,	:	Case No. 02-13396 (PJW)
Debtors.	:	Jointly Administered
	:	**RE: Docket No. 4025**

ORDER GRANTING, IN PART, AND DENYING, IN PART, THE OBJECTIONS OF U.S. BANK NATIONAL ASSOCIATION, AS INDENTURE TRUSTEE, TO AMENDED PROOF OF CLAIM NO. 8023 FILED BY JPMORGAN CHASE BANK, AS TRUSTEE FOR OMI TRUST 1997-A

(Filed May 6, 2004)

Upon the Objection of U.S. Bank National Association, in its capacity as indenture trustee ("U.S. Bank"), to the Claims of JPMorgan Chase Bank, as Trustee for Holders of the B-2 Certificate Guaranty Claims and Motion for Estimation of Such Claim Pursuant to Section 502(c) of the Bankruptcy Code, dated October 10, 2003 (the "Initial Objection"); and upon the Response of JPMorgan Chase Bank, in its capacity as trustee ("JPMorgan"), to U.S. Bank National Association's Objection to the Allowance of the Class B-2 Certificate REMIC Guarantee Claims and Motion to Estimate the Contingent Portion of the Claims, dated November 6, 2003, including the accompanying affidavits (with exhibits) of James R. Lewis and John J. Galban, sworn to November 3 and 4, 2003, respectively (the "Initial Response"); and upon the Supplemental

Objection of U.S. Bank National Association, in its Capacity as Indenture Trustee, to the REMIC Claims of JPMorgan Chase Bank, as Trustee for Holders of the B-2 Certificate Guarantee Claims, dated November 21, 2003 (the "Supplemental Objection," together with the Initial Objection, the "Objections"); and upon the Response of JPMorgan Chase Bank, in its Capacity as Trustee, to U.S. Bank National Association's Supplemental Objection to the Class B-2 Certificate REMIC Guarantee Claims, dated January 16, 2004, including the accompanying affidavits (with exhibits) of James R. Lewis and John J. Galban, sworn to January 14 and 15, 2004, respectively (the "Supplemental Response," together with the Initial Response, the "Responses"); and upon the Oakwood Homes Corporation Discount Rate Report of Houlihan Lokey Howard & Zukin, dated February 2004; and upon the Expert Report of Bradford Cornell of Charles River Associates, dated February 10, 2004, and all parties in interest having received good and sufficient notice of the Objections and the Responses; and hearings having been held on the Objections on November 13, 2003, November 26, 2003, January 23, 2004 and March 12, 2004; and after due deliberation and sufficient cause appearing therefore:

IT IS HEREBY FOUND THAT:

(A) The Court has jurisdiction to consider the Objections and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334.

(B) This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

(C) Debtor Oakwood Homes Corporation ("OHC") and its affiliates design, manufacture, market and distribute modular homes. In addition, OHC, through its subsidiary

Oakwood Acceptance Corporation, finances the majority of its retail sales through retail installment contracts or mortgages ("RICs").

(D) OHC funds its financing activities primarily by securitizing the RICs using Real Estate Mortgage investment Conduits ("REMIC") involving the sale to institutional investors of trust certificates. Non-debtor REMIC trusts issue the certificates, which evidence beneficial ownership interests in the assets of the trusts, including the RICs transferred to the trusts by OHC's affiliate. The holders of the REM1C trust certificates are entitled to payment by the REMIC trusts of principal and interest from monthly collections on the RICs.

(E) As part of the securitization transactions, OHC issued guarantees of any shortfalls in the payment of principal and interest due on the Class B-2 Certificates (the "Limited Guarantees"). Several REMIC trusts, including OMI Trust 1997-A, issued Class B-2 Certificates covered by the Limited Guarantees.

(F) JPMorgan, in its capacity as successor trustee for OMI Trust 1997-A, filed an Amended Proof of Claim (No. 8023) on behalf of the holders of the Class B-2 Certificates issued by OMI Trust 1997-A for the amount of principal and interest shortfalls due or projected to become due under the Limited Guarantees (the "Limited Guarantee Claims").

(G) In the Objections, U.S. Bank seeks, *inter alia,* an order disallowing the Limited Guarantee Claims to the extent that (a) they include amounts for interest shortfalls accruing after the petition date (November 15, 2002), (b) they include the increase in OHC's guarantee liabilities resulting from the so-called Flip-Up Motion (as defined in

the Objections and the Responses) and (c) they are not discounted to present value as or the petition date at the rate of 20%.

NOW, THEREFORE IT IS HEREBY ORDERED THAT:

1. For the reasons stated on the record at the November 26, 2003 hearing, the Limited Guarantee Claims are disallowed pursuant to Section 502(b)(2) of the Bankruptcy Code to the extent they include amounts for interest shortfalls accruing after the petition date.

2. For the reasons stated on the record at the January 23, 2004 hearing, the Limited Guarantee Claims are allowed to the extent they include the increase in OHC's guarantee liabilities resulting from the Flip-Up Motion.

3. For the reasons stated on the record at the January 23, 2004 hearing, Section 502(b) of the Bankruptcy Code requires the discounting of the Limited Guarantee Claims to present value as of the petition date, notwithstanding the disallowance of the interest shortfalls accruing after the petition date.

4. For the reasons stated on the record at the January 23, 2004 hearing, the proper rate to apply to discount the Limited Guarantee Claims to present value as of the petition date is the prudent investor rate.

5. For the reasons stated on the record at the March 12, 2004 hearing, the Court adopts the prudent investor rate of 7.74% proposed by JPMorgan's expert, Bradford Cornell of Charles River Associates, as the proper discount rate.

6. As stipulated by the parties, the Limited Guarantee Claims are allowed unsecured claims for interest shortfalls accruing prior to the petition date in the amount of $40,646.84.

7. As stipulated by the parties, and subject to each party's right to appeal from any of the above-referenced rulings, the Limited Guarantee Claims are allowed unsecured claims for principal shortfalls in the amount of $4,087,372, which after discounting to present value at the rate of 7.74% is $1,299,006.

8. This Court retains jurisdiction to interpret, implement and enforce the provisions of this order.

Dated: May 5, 2004
Wilmington, Delaware

/s/ Peter J. Walsh
THE HONORABLE
PETER J. WALSH
UNITED STATES
BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	Chapter 11
OAKWOOD HOMES CORPORATION et al.,	:	Case No. 02-13396 (PJW)
Debtors.	:	Jointly Administered
	:	RE: Docket No. 4025

ORDER GRANTING, IN PART, AND DENYING, IN PART, THE OBJECTIONS OF U.S. BANK NATIONAL ASSOCIATION, AS INDENTURE TRUSTEE, TO AMENDED PROOFS OF CLAIM NOS. 8018, 8017 AND 8016 FILED BY JPMORGAN CHASE BANK, AS TRUSTEE, FOR OMI TRUST 1998-D, OMI TRUST 1999-A AND OMI TRUST 1999-B

(Filed May 6, 2004)

Upon the Objection of U.S. Bank National Association, in its capacity as indenture trustee ("U.S. Bank"), to the Claims of JPMorgan Chase Bank, as Trustee for Holders of the B-2 Certificate Guaranty Claims and Motion for Estimation of Such Claim Pursuant to Section 502(c) of the Bankruptcy Code, dated October 10, 2003 (the "Initial Objection"); and upon the Response of JPMorgan Chase Bank, in its capacity as trustee ("JPMorgan"), to U.S. Bank National Association's Objection to the Allowance of the Class B-2 Certificate REMIC Guarantee Claims and Motion to Estimate the Contingent Portion of the Claims, dated November 6, 2003, including the accompanying affidavits (with exhibits) of James R. Lewis and John J. Galban, sworn to November 3 and 4, 2003, respectively

(the "Initial Response"); and upon the Supplemental Objection of U.S. Bank National Association, in its Capacity as Indenture Trustee, to the REMIC Claims of JPMorgan Chase Bank, as Trustee for Holders of the B-2 Certificate Guarantee Claims, dated November 21, 2003 (the "Supplemental Objection," together with the Initial Objection, the "Objections"); and upon the Response of JPMorgan Chase Bank, in its Capacity as Trustee, to U.S. Bank National Association's Supplemental Objection to the Class B-2 Certificate REMIC Guarantee Claims, dated January 16, 2004, including the accompanying affidavits (with exhibits) of James R. Lewis and John J. Galban, sworn to January 14 and 15, 2004, respectively (the "Supplemental Response," together with the Initial Response, the "Responses"); and upon the Oakwood Homes Corporation Discount Rate Report of Houlihan Lokey Howard & Zukin, dated February 2004; and upon the Expert Report of Bradford Cornell of Charles River Associates, dated February 10, 2004, and all parties in interest having received good and sufficient notice of the Objections and the Responses; and hearings having been held on the Objections on November 13, 2003, November 26, 2003, January 23, 2004 and March 12, 2004; and after due deliberation and sufficient cause appearing therefore:

IT IS HEREBY FOUND THAT:

(A) The Court has jurisdiction to consider the Objections and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334.

(B) This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

(C) Debtor Oakwood Homes Corporation ("OHC") and its affiliates design, manufacture, market and distribute modular homes. In addition, OHC, through its subsidiary Oakwood Acceptance Corporation, finances the majority of its retail sales through retail installment contracts or mortgages ("RICs").

(D) OHC funds its financing activities primarily by securitizing the RICs using Real Estate Mortgage Investment Conduits ("REMIC") involving the sale to institutional investors of trust certificates. Non-debtor REMIC trusts issue the certificates, which evidence beneficial ownership interests in the assets of the trusts, including the RICs transferred to the trusts by OHC's affiliate. The holders of the REMIC trust certificates are entitled to payment by the REMIC trusts of principal and interest from monthly collections on the RICs.

(E) As part of the securitization transactions, OHC issued guarantees of any shortfalls in the payment of principal and interest due on the Class B-2 Certificates (the "Limited Guarantees"). Several REMIC trusts, including OMI Trust 1998-D, OMI Trust 1999-A and OMI Trust 1999-B, issued Class B-2 Certificates covered by the Limited Guarantees.

(F) JPMorgan, in its capacity as successor trustee for the OMI Trust 1998-D, OMI Trust 1999-A and OMI Trust 1999-B, filed three Amended Proofs of Claim (Nos. 8018, 8017 and 8016) on behalf of the holders of the Class B-2 Certificates issued by these trusts for the amount of principal and interest shortfalls due or projected to become due under the Limited Guarantees (the "Limited Guarantee Claims").

(G) In the Objections, US. Bank seeks, *inter alia,* an order disallowing the Limited Guarantee Claims to the extent that (a) they include amounts for interest shortfalls accruing after the petition date (November 15, 2002), (b) they include the increase in OHC's guarantee liabilities resulting from the so-called Flip-Up Motion. (as defined in the Objections and the Responses) and (c) they are not discounted to present value as of the petition date at the rate of 20%.

NOW, THEREFORE IT IS HEREBY ORDERED THAT:

1. For the reasons stated on the record at the November 26, 2003 hearing, the Limited Guarantee Claims are disallowed pursuant to Section 502(b)(2) of the Bankruptcy Code to the extent they include amounts for interest shortfalls accruing after the petition date.

2. For the reasons stated on the record at the January 23, 2004 hearing, the Limited Guarantee Claims are allowed to the extent they include the increase in OHC's guarantee liabilities resulting from the Flip-Up Motion.

3. For the reasons stated un the record at the January 23, 2004 hearing, Section 502(b) of the Bankruptcy Code requires the discounting of the Limited Guarantee Claims to present value as of the petition date, notwithstanding the disallowance of the interest shortfalls accruing after the petition date.

4. For the reasons stated on the record at the January 23, 2004 hearing, the proper rate to apply to discount the Limited Guarantee Claims to present value as of the petition date is the prudent investor rate.

5. For the reasons stated on the record at the March 12, 2004 hearing, the Court adopts the prudent investor

rate of 7.74% proposed by JPMorgan's expert, Bradford Cornell of Charles River Associates, as the proper discount rate.

6. As stipulated by the parties, the Limited Guarantee Claims are allowed unsecured claims for interest shortfalls accruing prior to the petition date in the total amount of $614,552.40 as set forth specifically by trust as follows:

Trust	Pre-Petition Interest Shortfalls
1998-D	$248,305.15
1999-A	$168,318.06
1999-B	$197,929.19

7. As stipulated by the parties, and subject to each party's right to appeal from any of the above-referenced rulings, the Limited Guarantee Claims are allowed unsecured claims for principal shortfalls in the total amount of $17,185,304, after discounting to present value at the rate of 7.74%, as set forth specifically by trust as follows:

Trust	Undiscounted	NPV @ 7.74%
1998-D	$25,554,561	$7,400,411
1999-A	$24,591,125	$5,420,993
1999-B	$17,894,150	$4,363,900

8. This Court retains jurisdiction to interpret, implement and enforce the provisions of this order.

Dated: May 5, 2004
Wilmington, Delaware

/s/ Peter J. Walsh
THE HONORABLE
PETER J. WALSH
UNITED STATES
BANKRUPTCY JUDGE

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 05-2032 & 05-2033

IN RE: OAKWOOD HOMES CORPORATION,
Debtor

*JEFFERSON-PILOT LIFE INSURANCE COMPANY;
*JEFFERSON-PILOT FINANCIAL INSURANCE;
TYNDALL PARTNERS, LP and
TYNDALL INSTITUTIONAL PARTNERS, LP,
Appellants in No. 05-2032

(D.C. Civil Nos. 04-cv-00835, 04-cv-00836,
04-cv-00837, 04-cv-00838 and 04-cv-00839)

IN RE: OAKWOOD HOMES CORPORATION,
Debtor

JP MORGAN CHASE BANK,
Appellant in No. 05-2033

(D.C. Civil Nos. 04-cv-00835, 04-cv-00836,
04-cv-00837, 04-cv-00838 and 04-cv-00839)

On Appeal from the United States District Court
for the District of Delaware
(D.C. Civil Nos. 04-cv-00835, 04-cv-00836,
04-cv-00837, 04-cv-00838 and 04-cv-00839)
District Judge: Honorable Joseph J. Farnan, Jr.

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* Amended in accordance with Clerk's Order dated 7/22/05.

Present: SCIRICA, Chief Judge, SLOVITER, McKEE, RENDELL, AMBRO, FUENTES, SMITH, FISHER, VAN ANTWERPEN and CHAGARES, Circuit Judges

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SUR PETITION FOR REHEARING
WITH SUGGESTION FOR REHEARING EN BANC

The petition for rehearing filed by Appellee having been submitted to all judges who participated in the decision of this court, and to all the other available circuit judges in active service, and a majority of the judges who concurred in the decision not having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court *en banc,* the petition for rehearing is hereby denied.

By the Court,

/s/ Franklin S. Van Antwerpen
Circuit Judge

Dated: July 11, 2006

CRG/cc: G. Eric Brunstad Jr., Esq.
Timothy B. DeSieno, Esq.
Jason M. Madron, Esq.
Rheba Rutkowski, Esq.
Karen C. Bifferato, Esq.
Robert J. Dehney, Esq.
Michael B. Fisco, Esq.
Gilbert R. Saydah Jr., Esq.
John J. Galban, Esq.
Russell C. Silberglied, Esq.
Robert J. Stark, Esq.